

arrested by John Simpson, creditor to Blair, the LORDS found, That it was arrestable, albeit it was destined to be employed by the said Blair at the term of payment; and found it not an heritable sum, as not subject to arrestment, in respect of the said destination, seeing there was no annualrent conditioned to be paid therefor by the said Anthony: And also found, That sentence might pass therefor, albeit the term of payment was not come the time of the arrestment, but that it was conferred to a term after Anthony's decease, and albeit Blair himself could not seek it before the term; for this cause was considered as a declarator in favours of the arrester, to prefer his diligence, and superseded the execution of his decret while the term of payment should come; the pursuer's sum was owing by an heritable bond bearing annualrent yearly. Also the LORDS found, That this sum arrested should be made forthcoming to the pursuer at the term of payment, not only for the principal sum addebted to the pursuer, and the annualrents owing the time of the arrestment, but also for all the annualrents thereof in time to come, ay and while the foresaid term of payment were come, to the which the said sum arrested is conferred to be paid, and that the pursuer needed not to arrest yearly hereafter for the annualrents that shall be owing. (*See HERITABLE and MOVEABLE. See LEGAL DILIGENCE.*)

A.G. *Gilmor.*Alt. *Barclay.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 55. Durie, p. 681.*1634. *July 29.* L. LUGTON *against* CREDITORS OF DISHINGTON.

L. LUGTON being debtor to William Dishington in a sum to be paid at a term, and to pay annualrent therefor yearly after the term, while it were repaid; which sum being arrested by a creditor of the said William Dishington's, who pursuing to make the same forthcoming, conform to the arrestment, it was found, That the said sum, owing by the bond, of the tenor foresaid, was heritable, and consequently not being made moveable by a charge, preceding the arrestment, it was not arrestable.

*Fol. Dic. v. 1. p. 55. Durie, p. 735.*1635. *January 29.* KER *against* KNOWS.

ONE Ker, donatar to Robert Mudie's escheat, after general declarator thereon, and also after special obtained against one Craw, debtor of a sum to the said Robert Mudie; he arrests in Mr Christopher Knows' hands the like sum, owing by him to the said Craw, and pursues to make it forthcoming. And the defender *alleging*, That the sum was not arrestable, because the same was owing by a bond, the term of payment whereof was Whituesday; and in case of failzie then of

No 34.

a debtor's death, was found in the mean time arrestable.

No 35.

A sum was payable at a term, and the debtor bound to pay annualrent after the term till payment. This sum, as being heritable, was found not arrestable.

No 36.

A sum, in the situation of the above case, arrestable before the term of payment.

No 36.

payment, he was obliged to pay annualrent therefor, whereby the same became heritable, and so not arrestable. This exception was repelled, because the arrestment was laid upon this sum before the term of payment; at which time the heritable clause could not take effect: Likeas after the term, how soon it was payable, he pursued for the same; and, as if the creditor had died before the term, the sum would have pertained to his executors, and not to his heirs, notwithstanding of that heritable clause; so the arrestment before the term was found to affect the sum, notwithstanding of the tenor of the bond: It is ever doubted by me, if these preceding decisions be good, whereby sums owing by such bonds, after the terms of payment, are found not arrestable; for I think the clause to pay annualrent therefor, nor no surety, nor other right following thereon, ought to exempt the same from arrestments. (*See case between the same parties; voce Jus quasitum tertio.*)

Act. Craig.

Alt. ———

Clerk, Gibson.

Fol. Dic. v. 1. p. 55. Durie, p. 745.

* * Spottiswood states the same case thus :

WILLIAM KER, donatar to Robert Mudie's escheat, arrested in Mr Christopher Knows' hands 4000 merks, addebted by him to James Craw, who was debtor to the rebel in as much; and having, in a special declarator, summoned Mr Christopher to make the same sum forthcoming, it was *alleged* absolvitor, because the same was heritable, and so not arrestable. *Replied*, This ought to be repelled, because an heritable bond may be arrested; and, however, this sum was moveable the time of the arrestment, it being made before the term of payment. *Duplied*, Although it might appear to have been moveable the time of the arrestment, yet the pursuer could not seek it to be made forthcoming before the term of payment was come, at which time it was heritable, and so could not be arrested. THE LORDS repelled the exception, and found that an heritable bond might be arrested.

Spottiswood, (ARRESTMENT.) p. 18.

1637. June 28.

GALBRAITH *against* LENNOX of Blairfhogel.

No 37.

In opposition to No 29. p. 696; A sum destined to heirs, and to be employed on land, found arrestable after the term of payment.

By contract of marriage betwixt Andrew Galbraith and Janet Lennox, his future spouse, John Lennox of Blairfhogel, father to the said Janet, is obliged to pay in tocher, the sum of _____ money to the said Andrew Galbraith, to be employed upon land by the said Andrew, to the behoof of himself in liferent, and and his spouse, and the longest liver of them two, and the heirs to be gotten betwixt them; which failing, the one half to pertain to John Lennox, younger of Blairfhogel; which sum being arrested by Mr John Galbraith, minister, for satis-