

ment could not reach any further than for the tack-duty arrested, which was due the time of the arrestment, but not for any term following the arrestment, because arrestment being a legal execution, can no more proceed upon a debt, before the term that the debt be due than apprising; and further *alleged*, That they had made payment of the subsequent terms to the debtor, which they were in *bona fide* to do, knowing no law nor custom to the contrary.

THE LORDS repelled the defence, and found the arrestment to be valid for that term's duty that was then running, and found that the arrestment was rather like to an inhibition than an apprising, which gave present payment.

Fol. Dic. v. 1. p. 57. Stair, v. 1. p. 649.

. Gosford reports the same case thus:

In an action to make arrested goods furthcoming at the instance of the relief of Mr George Lelly, who had arrested in the hands of Duke Hamilton the sum of money due to Cunningham, who was cautioner in a tack for the tenant: The question was, That the pursuer had arrested for a term's duty which was only *in cursu*, and the term not come, before which it was not due.—It was *alleged*, That the tenant himself not being liable, neither he, far less his cautioner, could be discerned to make payment as debtor; and consequently, cautioner's money could not be arrested.—THE LORDS, notwithstanding, did find the arrestment valid, in respect that the subsequent term's duty was constituted by a preceding tack, for which arrestment might be used, as being only *pignus prætorium*, which did resolve in a security, that the term of payment being past, the sums arrested might be made furthcoming; and in law *ubi cessit dies licet nondum venit*, such diligences are allowable.

Gosford, MS. p. 78.

1705: January 31.

JOHN CORSE, Writer, *against* GEORGE MASTERTON, Portioner of Bothkenner.

THE deceased George Masterton infests Margaret Dalrymple, his spouse, in the liferent of some houses. After his death she marries one Muirhead; and he being debtor to Corse in a sum of money, Corse arrests the rents in the tenants hands, as falling under his debtor's *jus mariti*. George Masterton, the first debtor's heir, and the fiar of the lands, compares, and *alleges*, Corse's arrestment is null, because the subject arrested was no debt, and had no being at the date of the arrestment, because the existence of the debt depended on the two joint lives of the husband and the wife; and if any of the two had died before the term, there was nothing due, and so the arrestment fell to the ground; and what makes it due, is the liferentrix outliving the term, and till then no arrestment could affect it; for, before that, it was a *non ens*, and the arrestment had no foundation.

No 91.

gainst Tenants, No 89: p. 765.

No 92.

An arrestment was laid upon a wife's annuity, payable out of land, for a debt due by the husband, who had right to the annuity *jure mariti*. The arrestment found to affect even the current term's rent.

No 92.
although, it
being uncer-
tain whether
the wife
would live
till the term,
*dies nec cessit
nec venit.*

till they had outlived the term.—*Answered*, This is a notion never before advanced; for though the arrestment would eventually be ineffectual if either the wife or husband had died before the term, yet being laid on *currente termino*, and they outliving it, it is certainly a valid diligence; and has been so decided in a competition betwixt an arrester and an assignee; 27th July 1673, Creditors of Scot competing, No 39. p. 702.; and Stair, *lib. 3. tit. 1. § 29.* allows arrestments of debts before the term of payment; and arrestments on conditional debts are valid, as Dirleton observes, *voce Jus mariti*, and cites *l. 18. D. de reg. jur.* and the case is clear *in annuis legatis*, § 3. *Institut. de verb. obligat. l. 16. § 1. D. eod. tit.*—*Replied*, There is a great difference betwixt this case and arrestments on debts whereof the term of payment is not come; for there *dies cessit licet non venit*; but here it cannot be so much as said that *dies cessit*; for *non subest debitum omnino* till the term come; and they might as well arrest for all subsequent terms that the liferentrix shall happen to live, as for that current one. The Lords thought the casting of such arrestments might lay a foundation to defraud the creditors of liferenters; for, if their rents could not be arrested till the term were past, then by compounding and giving down a little they might uplift it summarily, and so prevent all diligence of creditors; and therefore the Lords sustained Corse's arrestment as valid to affect that current term, and repelled the allegation of nullity against it.

Fol. Dic. v. 1. p. 57. Fount. v. 2. p. 263.

1705. June. 16.

ROBERT HAMILTON, Merchant in London, *against* Mr WILLIAM LIVINGSTON of Kilsyth.

No 93.

A person disposed his estate, reserving an annuity, to be paid *per advance* quarterly, under name of aliment. An arrestment in the hands of the disponee, found to affect the current term, although, none of the quarterly payments *per advance*, were at the time outstanding.

ROBERT HAMILTON, being creditor to the Viscount of Kilsyth, arrested twice in the hands of Mr William Livingston of Kilsyth, his brother, and raised a furthcoming: In which Mr William deponed, 'That he was obliged to pay yearly to the Viscount, 2000 merks of aliment, and that quarterly *per advance*, conform to a disposition, made by the Viscount, of his estate to the deponent, reserving to himself the said annuity. And that the time of the arrestment he was resting none of these quarter payments, they having been paid *per advance*; and that he was debtor no other manner of way to the Viscount.'

The defender craved to be affoizied, in respect arrestment cannot affect subsequent terms, but only bygone rests, and the current term, 28th July 1669, Leslie *contra* Cunninghame, No 91. p. 766. And he was resting nothing of by-gones, and had paid *bona fide* the current terms arrested *per advance*. For an arrester can be in no better condition than the person whose debt is arrested; where he can have no action for direct payment, neither can the arrester have for making furthcoming. Now the time of the arrestment no action was com-