

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-

petent to the Viscount for the current term, paid according to paction *per* advance, nor yet for a subsequent term.

No 93.

Alleged for the arrester:—That the Viscount's aliment, or liferent, being paid *per* advance, could never be arrested, if the arrestment did not affect subsequent terms.

Answered: The aliment was fairly and justly constituted without the least design to defraud any creditor; and the punctual payment *per* advance, according to paction, can be no ground to alter the case in law: For no man is bound to keep his creditors money from him one moment after it falls due, to wait for arresters.

THE LORDS upon advising the oath, with the Viscount's disposition to the deponent, found the debt acknowledged to be of the nature of a reserved liferent, affectable by arrestment; and therefore decerned,

Fol. Dic. v. i. p. 58. Forbes, p. 4

1795. March 10.

ADAM LIVINGSTON, and Others, against GEORGE FARQUHAR KINLOCH.

No 94.

THE rents of the estate of Craighforth (the tenants of which, in general, enter into possession at Martinmas, and pay their rents at Whitfunday and Martinmas, by equal portions) having been arrested by different creditors of the landlord, the tenants raised a process of multiplepoinding, in which the rents payable at Martinmas 1792 were claimed by Colonel Livingston, and others, upon an arrestment executed on the 12th of November 1791; and, by Mr Farquhar Kinloch, upon an arrestment executed on the 18th June 1792.

When the rent of the current year is payable at Whitfunday and Martinmas, an arrestment before Whitfunday will only attach the rent payable at that term.

The LORD ORDINARY, in respect it is admitted that the rents of the estate of Craighforth are payable at two terms in the year, Whitfunday and Martinmas, in equal portions, found, that the arrestments laid on in the hands of the tenants, on the 12th November 1791, attached only the current rent that became payable at Whitfunday 1792, and that the arrestments on the 18th June 1792, attached the rents that became payable at the term of Martinmas following.

In a petition for Colonel Livingston against this interlocutor, it was stated, That not only arrears due by a tenant, but current rents may be attached by arrestment. That by current rents, are meant those *quorum dies cessit, sed nondum venit*. Erk. b. 3. t. 6. § 9; and that although rents may be made exigible by termly payments, the obligation to pay a year's rent is an *unum quid*, which cannot be divided, and is wholly incurred by possession for the smallest part of the year; and that, consequently, the rents claimed were *current* on the 12th November 1791; on which account, accordingly, the landlord might then have sequestrated the stock of the tenant for payment of them.