

* * Haddington reports this case :

No. 10.

Sir Alexander Napier, James Inglis, James Leslie, and George Austine, being contractors with Roger Duncanson for security, to have been made to them by Duncanson, for soumes auchtand to them by infestments of wadset lands, and the said partners being bound lovingly, faithfully, and friendly, ilk ane to assist others for obtaining their securities, Napier obtained the gift of Duncanson's life-rent, seeking declarator. The parties excepted upon the contract and bond of mutual assistance. Napier replied, That he was not thereby excluded from the liberty to take the life-rent, vacant in his Majesty's hands, which was free to every subject. The partners granted that he might, but not with such freedom to use it to their prejudice as a stranger might have done, *ob contractum bonæ fidei inter eos initum*, and the clause of friendly concurrence; so as he who was bound to concur to procure them surety from others, could not impugn their right by any title procured to himself. The Lords, having respect to the clause of their mutual and friendly contract, found the exception relevant, the partners paying to the pursuer all expenses disbursed by him in purchasing the gift, declarator, and other charges.

Haddington MS. No. 3101.

1696. December 9.

BROCK against BROWN.

HALCRAIG reported Robert Brock, Goldsmith in Glasgow, against George Brown, Flesher there, who had entered into a co-partnery of buying Highland cows, and selling them by retail, in Glasgow market, wherein Bailie Brock contributed £.100 Sterling, for buying the stock, and the other furnished no money, but only his pains in going to the Highlands and buying them, and in killing and selling them; and being pursued for the product before the Commissary of Glasgow, and being twice examined, and decerned for the balance; and having suspended, the Lords found his second oath the rule; and where one gives in *pecunia* to a Society, and the other his *opera* and personal labour only, they thought he could claim nothing on the account of his pains, seeing that was all he conferred to the society in place of money, and therefore expunged the article of £.200 Scots, he craved *eo nomine*.

Fol. Dic. v. 2. p. 376. Fountainhall, v. 1. p. 741.

1707. March 18.

ALEXANDER ALISON, Writer to the Signet, against The DIRECTORS of the AFRICAN COMPANY.

ALEXANDER ALISON having, as creditor to Henry Crawford, merchant in Dundee, one of the joint adventurers in the African Company, arrested in the

No. 11.
No charge can be made for trouble, where no stock is contributed.

No. 12.
Share of the capital stock of a company,

No. 12.
which by the contract was declared not to be arrestable, was found arrestable at the instance of the proprietor's creditor, in order to oblige the directors to transfer the same in the ordinary way in favour of the arrester.

hands of the Directors and the Cashier, he pursued a forthcoming, and a declarator of right to the subject.

Alleged for the defenders: 1. Whatever come of the subject arrested, they cannot be decerned personally to make forthcoming. 2. The act 1695, establishing the Company, declares, that no part of the joint stock shall be liable to arrestment, and that the property shall only be conveyed by transfers in their books, except the share of profit belonging to any particular member, which may be affected by the real diligence of creditors, and arrestment is not a real diligence.

Replied for the pursuer: 1. That he doth not insist to have the defenders liable personally, but only *ratione officii*. 2. Though voluntary conveyances can only be made by transfers, the subject may be affected by the real diligence of creditors; and arrestment (which is a *nexus realis* upon the subject) is certainly such a habile diligence. Albeit for the general advantage of the nation, and encouragement of that trade, the Parliament declared the stock not upliftable; *res devenit in alium casum*, the Company being dissolved *in diem* by law, and the stock with interest to be paid unto the respective adventurers and proprietors.

Duplied for the defenders: The money to be paid in for the capital stock and interest not being yet in the company's hands, no arrestment thereof can be effectual.

Triplied for the pursuer: Arrestment upon a subject inchoately habile, subsists after it becomes fully habile; as a creditor arresting a sum due upon a wadset before redemption, is preferable to a second arrester after redemption, Dirltoun's Questions, Tit. ARRESTMENT OF CONDITIONAL DEBTS. Arrestment of the price of lands after a verbal agreement, was sustained after the bargain was reduced in writ, Stair, Lib. 3. Tit. 2. N. 29; and there are many decisions sustaining arrestment, *currente termino*, of what may be due to a liferentrix, upon her surviving the term.

The Lords found the pursuer's arrestment to be a habile diligence for affecting his debtor's share both principal and interest in the African Company, in order to oblige the Directors to transfer the same in his favours after the ordinary form.

Forbes, p. 153.

* * * Fountainhall's report of this case is No. 43. p. 707. *voce* ARRESTMENT.

1742. November 19.

NEILSON against RAE.

No. 13.
Nature of stock.

A PARTNER in a company having become bankrupt, some of his creditors used arrestment in the hands of the company; and he dying soon after, others confirmed his interest in the company. In a competition of these creditors, the nature of a partner's stock in a trading company was the subject of much consideration, and