

1738. *July 4.*LOCHWOOD *against* WILSON, CREDITORS of Sir JAMES CAMPBELL.

CAMPBELL of Kirnan being debtor by several adjudications to Auchinbreck, they came, during a process of count and reckoning, to an agreement, struck the balance at about L.6000, but upon payment of L.4000 against Martinmas, Auchinbreck was to discharge him. On the 3d of November, Kirnan made a tender of the money, and upon Auchinbreck's refusal, applied to the Ordinary, and by his allowance, on the 11th November, consigned it. Lochwood, as creditor to Auchinbreck, arrested 12th and 13th November, in the clerk's hands. Wilson, another creditor, arrested in the hands of both Kirnan and the clerk's, on the 17th and 18th November; and the Ordinary, 19th November, by an interlocutor then signed, but pronounced some days before, sustained the consignment; and thereafter, in the competition betwixt the arresters, found that the consignment did not transfer to Auchinbreck the property of the money, till it was judicially sustained, and therefore that it was not affected by Lochwood's arrestment, and preferred Wilson; but the Lords preferred Lochwood, though they were divided in the reasons of preference. Some indeed thought the money not at all arrestable, because secured by adjudication; but that being got over, some thought Lochwood's preferable, because in the clerk's hands, which they thought more habile than in Kirnan's; others thought it preferable only because prior in date, and thought both arrestments equally habile; and upon a narrow division, it carried to mention the dates of the arrestments in the interlocutor. (See DICT. No. 68, p. 736.)

No. 8.
Arrestment of a
sum consigned.

1738. *December 21.*EARL of ABERDEEN *against* CREDITORS of SCOTT of Blair.

ARRESTMENT found not to fall by the death of the person in whose hands it has been used, but may be made effectual by a forthcoming against his heir,—after being heard in presence. (See DICT. No. 101, p. 774.)

No. 9.

1739. *January 10.* CREDITORS of MENZIES of Lethem, *Competing.*

ARRESTMENT sustained being used in the hands of the Treasurer of the Trades Maiden Hospital, for himself and successors in office, (and the same

No. 10.

- No. 10. of intimation to him of assignments) for affecting a debt due by the hospital, though not used in the hands of the Governor and Directors; and preferred to another in their hands according to its date; because by the constitution of the Hospital, he was the proper officer for granting bonds to bind the Hospital. *Vide* Creditors of Hardie, 22d June 1742, No. 19, *infra*. (See DICT. No. 69, p. 738.)

1739. February 7.

Mrs. FRANCES SINCLAIR *against* CREDITORS of Her Husband.

No. 11.

ARRESTMENT by the husband's creditors of an heritable debt of the wife's (a bond bearing annualrent;) the Lords found, that the arrestment did not affect the whole *jus mariti*, (as they had found 5th July 1726, Spruel *against* Sir James Grant,) but only the bygone annualrents. (See DICT. No. 49, p. 713.)

1739. June 26.

JOHN TUACH of Logiereoch *against* M'KENZIE of Dundonald.

No. 12.

ARRESTMENT being used in the hand of the consigner of money for redemption of a wadset at the instance of the reverser's creditors; in the declarator of redemption, a forthcoming being repeated, the Lords found that the arrestment did not so affect the consigned money as to prejudice the redemption or hinder the declarator. (See DICT. No. 3. p. 3078.)

1739. November 20. CREDITORS of SCOTT of Blair *against* E. of ABERDEEN.

No. 13.

ARRESTMENT in the hands of an apparent heir not served or entered at the time (though he was afterwards served) found to affect a debt due by his predecessor, albeit that heir was not debtor himself at the time of the arrestment; because an apparent heir sustained *personam defuncti et hereditatem jacentem*; and most of the Lords thought there was no other habile diligence whereby a creditor of a defunct can affect a moveable debt due by the defunct. *Vide inter eosdem*, No. 9, *supra*. (See DICT. No. 70, p. 738.)