

No 68. Sir James the time of Wilfon's; for, if the money was Sir James's, it is duly arrested, and must be made furthcoming to Lockwood; but, if it was not, then his arrestment could not affect it.

THE LORDS found the arrestment, laid on in the clerk's hands by Richard Lockwood, upon the 12th and 13th of November 1736, preferable to the arrestment laid on by William Wilfon in Kirnan's hands, upon the 18th November 1736.

*C. Home, No 97. p. 154.*

1739. *January 10.*

No 69.

Arrestment in the hands of the treasurer of an incorporation, is a competent mode of affecting a fund in the possession of an incorporation.

JOHN KEIR, Treasurer to the Trades Maiden Hospital, *against* the CREDITORS of MENZIES of Lethem.

IN a competition between the several arresters and assignees, to a debt due by the Maiden Hospital to Menzies of Lethem; the LORDS, after inquiry made into the practice of arrestments of corporation debts, and of intimation of assignations thereto; ' Found arrestment in the hands of, and intimation of an assignation to the treasurer of the incorporation, a proper arrestment and intimation.

*Fol. Dic. v. 3. p. 42. Kilkerran, (ARRESTMENT.) No 3. p. 36.*

1739. *June 29. & November 20.*

No 70.

Whether arrestment may be effectually used in the hands of an apparent heir? Found; but doubted.

EARL of ABERDEEN *against* the other CREDITORS of SCOT of Blair.

THE Earl of Aberdeen being creditor in a bond of L. 600 Sterling to Mr William Scot, husband to Magdalen Blair, proprietrix of the estate of Blair, did, in August 1729, after the death of Magdalen, raise horning on his bond, and arrest in the hands of William Blair, son of Mr Scot and Magdalen, and at that time apparent heir to his mother in the estate of Blair; and afterwards, in October 1733, the said William Blair being then served heir to his mother, the Earl used a new arrestment in his hands.

The state of the debt due by William Blair to Mr Scot his father, the Earl's debtor, was this. Mr Scot, who liferented the estate of Blair by the courtesy, had also acquired a right to certain of the family debts, for which William Blair was liable as representing Magdalen his mother, and William Blair of that ilk his grandfather. But then, as already said, William Blair the arreteer had not made up titles, and so was only heir apparent to his mother at the date of the Earl's first arrestment in 1729.

In the furthcoming pursued by the Earl upon his said first arrestment, but in which he had also produced his second arrestment, two questions occurred. The *first* was on this point in form, How far, supposing the first arrestment, which was that on which the furthcoming was pursued, to be ineffectual, and to carry no-

thing ; in respect William Blair the arrestee was, at the date thereof, only heir apparent, and so not liable for the debts in his father's person, the furthcoming could proceed on the second arrestment which was used after he was served heir? And the *second* was, Whether even the first arrestment in William's hand, while he was but heir apparent, was not an effectual arrestment, and therefore a sufficient foundation for carrying on the action of furthcoming, especially as William the arrestee was afterwards served heir to his mother?

Upon the *first* of these, viz. the point of form, it was admitted, that where one has two arrestments of the same subject, he need not raise a furthcoming upon each of them ; but having pursued a furthcoming upon one of his arrestments, he may in that furthcoming produce his other arrestment, and compete upon it ; just as any third party may, when a furthcoming is pursued by another creditor, produce his arrestment, and compete upon it, though he have no furthcoming upon it at his own instance. But then it was said, that these other arrestments produced in the furthcoming could only be insisted on, in so far as they affected the subject which fell under that arrestment, which was the ground of the furthcoming ; and therefore, upon the supposition that the arrestment in 1729, on which the furthcoming was pursued, was void, as carrying nothing, the arrestment in 1733 could not be insisted on in that furthcoming pursued on the void arrestment.

On the *other* hand, some were of opinion, that although the subject were not affected by the arrestment on which the furthcoming was raised, yet another arrester who had affected the subject, producing his arrestment, might in that very process obtain decree ; for that it was enough if the form of the process comprehended the subject. And to this a parallel case was figured of an action of mails and duties pursued, in which a third party had produced an interest ; though the summons of mails and duties could be cast upon a No-process, it was said that nevertheless the third party who had produced his interest might insist.

But this point of form received no judgment, the Lords having, upon the 29th June 1739, before answer to it, ' remitted to the Ordinary to hear parties upon the validity of the first arrestment in 1729.' And, upon the 20th November 1739, they found, ' that the subject was habilely affected by the arrestment in 1729 in the hands of William Blair younger of Blair, though at the same time only apparent heir.' Which superseded the question upon the point of form.

What method creditors are to take to affect moveable subjects in the hands of the apparent heir of their debtor's debtor, is a point that well merits to be considered, and is far from being yet settled by this judgment : For, besides that, in this case, the apparent heir did thereafter enter, whose service might be considered to have operated *retro* to his predecessor's death, and without which circumstance the arrestment should have availed nothing, I say, besides this, even with that circumstance of the arrestee's after-service, the point here decided was narrow enough, and the Court far from being unanimous upon it.