

Pleaded: Anciently the only effect of arrestment was to prevent voluntary payments to the debtor himself. In a competition of creditors, it was not the person whose arrestment was first executed, but he who first obtained a decret of furthcoming, to whom the preference was given: And hence it sometimes happened, that a prior arrefter, who had brought his action in the Court of Session, was postponed to one, who, having commenced the same action in an inferior court, had, from the shortness of the *induciae* there allowed, been able more speedily to complete his diligence. In modern times, it is true, this strictness has been considerably relaxed; but still any unreasonable delay will be fatal to the preference otherwise given to priority in date. A second arrefter, therefore, who, without loss of time, has brought his action, and who has obtained a decret, ought certainly to be preferred to one, who for years has neglected to follow out his diligence in a proper manner. Spottiswood, *Harcarse, v. Arreftment*; Stair, b. 4. tit. 35. § 6.; Bankton, b. 3. tit. 1. § 43.; Erskine, b. 3. tit. 6. § 18.

Answered: Since the enactment of 1669, limiting the duration of arrestments to five years, it does not appear that any other restraint ought to be imposed on the users of this mode of diligence. At any rate, the preference here awarded seems unsupported by any precedent. Whatever may have been the effect of arrestment in the most ancient periods of our law, it has now, for a long while, been considered, not only to prohibit payments to the debtor, but also to create a certain *lien* or *nexus* in favour of the arrefter, which nothing but an extracted decret of preference obtained by another creditor can effectually disappoint. In the present case, as an action of multiplepinding had been commenced, to which the first arrefter was a party, an extracted decret in that process would also have been necessary, to put the arrestee in safety to pay to any other person.

The Lords altered the interlocutor of the Lord Ordinary, and found the first arrefter to be preferable.

Lord Ordinary, *Alqa.* For John Ramsay, *M'Cormick.* For James Lister, *Patison.*
Clerk, *Orme.*

Craigie.

Fol. Dic. v. 3. p. 46. Fac. Col. No 343. p. 537.

Expences of Arrestment.

1740. January 4.

INNES against FORBES.

In a competition between Innes as arrefter in the hands of Peter Crawford, on a debt due by him to Robert Gordon by a promissory note, and Forbes as indorsee by Robert Gordon to the said promissory note, Innes had formerly been preferred upon his arrestment; and now Forbes having insisted that Innes should

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A party found entitled to retain the expences of arrestment

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and furth-
coming out
of a separate
security he
held.

therefore assign to him a separate security, which he had from Gordon, in so far as the same, together with the sum recovered by the arrestment, exceeded the debt in which he was creditor; with which Innes was willing to comply, provided he should be allowed retention of the expence of his arrestment and furthcoming out of the sums in said separate security; the LORDS found, ' That Innes should have retention of the sum in said separate security, to the extent of the expences of his arrestment and furthcoming.'

N. B. Where the ground of the arrestment is a bond containing penalty, the penalty is as much the ground of the arrestment as is the principal and annualrents; and therefore the sum recovered upon the furthcoming will only extinguish so much of the principal and annualrents as comes free to the furthcomer, after deduction of his expence. But where the ground of the arrestment is a bill, then, as the expences in the furthcoming were not the ground of the arrestment, the sum recovered on the furthcoming will wholly apply to extinguish the principal and annualrents of the bill, and the expences be only reclaimable by personal action against the common debtor, with which nevertheless it was very consistent to allow the retention in the present case.

Fol. Dic. v. 3. p. 46. Kilkerran, (ARRESTMENT.) No 7. p. 39.

ARRESTMENT before the term of payment, on a dependence upon a conditional debt, &c. *See* LEGAL DILIGENCE.

ARRESTMENT in SECURITY. *See* LEGAL DILIGENCE.

ARRESTMENT upon an obligation not registered. *See* LEGAL DILIGENCE.

ARRESTMENT makes the Subject LITIGIOUS. *See* LITIGIOUS.

Arrestment at the market cross of Edinburgh, pier and shore of Leith.
See Bona fide payment.

See No 1. p. 133. and No 10. p. 139. of this Dictionary.

Execution of Arrestment in the night-time. *See* EXECUTION.