

ditors. Arthur Miller had no claim upon the effects; and it will not be said that he could have dismissed the factor, taken the management from him, vested it in another, or assumed it himself. An arrestment, therefore, in the hands of the bankrupt himself, were totally inept, and can answer no manner of purpose. Unless, therefore, it can be maintained, that there is no method known in law by which the dividend due to a creditor can be affected, it must be admitted, that an arrestment is effectually used in the hands of the judicial factor named by the Court, as the only other person in whose hands an arrestment can be laid.

The pursuer here of the multiplepointing is not a factor, or steward, or trustee, with powers limited to the rents of a particular estate, as in the case of *Campbell contra Faichney*, which is that quoted by Mr Erskine, B. 3. t. 6. 34. from Faculty Collection, I. 44. No. 74. p. 742. but he is a general commissioner named by this Court, with powers of the most comprehensive kind, extending to the whole effects of the bankrupt. And if, by the rules of law, as admitted on the other side, an arrestment be sustained in the hands of a commissioner named by a private person in contradistinction to a mere factor, it seems to be a clear point, that an arrestment must be equally effectual, when used in the hands of a factor named by the Court, with powers as comprehensive as those of any commissioner. Thus, in a case observed by Home, 4th July 1738, *Lockwood contra Willon*, No 68. p. 736. an arrestment in the hands of the clerk of Court, with whom money had been consigned, was not only sustained, but it was preferred to an arrestment used in the hands of the consigner.

'The Court adhered to the Lord Ordinary's interlocutor preferring Cross and Bogle, upon their interest produced, to the sums in the hands of the raiser of the multiplepointing.'

Aff. G. Fergusson.

Alt. Al. Abercrombie.

Clerk, Campbell.

Wallace, No 161. p. 41.

1780. February 25.

JOHN GRIERSON against JOHN RAMSAY.

JOHN DICKSON, for behoof of his creditors, conveyed his heritable estate to a trustee; and in a deed of accession to this conveyance all his creditors concurred. But the trust-right did not specify the debts, nor was the trustee infest.

One of these creditors was Ebenezer Hepburn; to whom, again, Grierson was a creditor.

After the trust-conveyance, but before the trustee had proceeded to sell those subjects, Grierson laid an arrestment in his hands; and, when the sale was over, insisted in a process of furthcoming. In this action he was opposed by Ramsay, in the character of trustee for the creditors of Hepburn, who had likewise become bankrupt; Ramsay objecting that the arrestment was inept, *first*, because it had not been used in the hands of the common debtor himself, but only of his trustee; and, *2dly*, because no moveable effects remained at the time in the trustee's pos-

No 84.

Arrestment, the habile diligence for affecting the price of heritable subjects in the hands of a trustee for creditors.

No 84. feffion; and though he was vested in the heritable subjects, yet that these could not be attached by that personal diligence.

The Court had no difficulty in repelling the first objection; but, with respect to the second, they ordered a hearing in presence on this point, 'How far an arrestment in the hands of a trustee, to whom an heritable estate is disposed for payment of creditors, is a habile mode of diligence to affect the proportion of the price of said estate corresponding to the debts due to any of the creditors, though the estate was not sold at the time of the arrestment.'

*Pleaded* for Ramsay against the arresting creditor, No heritable subject is arrestable. Prior to the statute 1661, cap. 32. which declared bonds bearing annual rent moveable, except *quoad fiscum et relictam*, such bonds could not be arrested; Durie, July 29. 1634, Laird of Lugton *contra* Creditors of Dishington\*. And afterwards a particular enactment by the same statute, cap. 51. was necessary to render personal obligations in heritable bonds, even those on which infeffment had not followed, subject to arrestment. Now, in the present case, there exists in the trustee a complete heritable right, though personally vested; and if a special statute was requisite in the above-mentioned instances, it would certainly be much more necessary to render an heritable right like this a subject of arrestment; for otherwise every personal right to lands would be arrestable, whereas adjudication is undoubtedly the only mode of attaching such subjects.

*Answered*, The thing arrested is the interest of Hepburn, a creditor under this trust-right; and all the argument on the other side of the question proceeds on the erroneous supposition of that interest being a share *pro indiviso* in the heritable subjects conveyed. On the contrary, the whole interest of the creditors by the trust-deed resolves into a claim of accounting against the trustee. The case is similar to that of the creditors of a particular partner in a company, who may attach by arrestment their debtor's share in the company-stock, although it be composed of heritable subjects.

*Observed* on the Bench, Were the idea of a *pro indiviso* interest accruing to creditors in the whole estates conveyed to trustees to prevail, it would render the execution of trust-rights inextricable. The effect of the trust-deed now in question was not to give such an interest, but merely to found against the trustee a personal action arising to the creditors from their *jus crediti* in the estate of their debtor, in order to make him account to them for his intromissions. This *jus crediti* could not be affected by adjudication; and therefore is the subject of arrestment; for by one or other of these diligences, a creditor is entitled to attach every estate belonging to his debtor. Accordingly, where the estate of a company is vested in a trustee, arrestment will carry to a creditor a share in that estate, whether heritable or moveable, indiscriminately.

THE LORDS repelled the objections to John Grierfon's arrestment, and sustained the same as sufficient to affect the dividend of the proceeds of the heritable subjects which belonged to Dickson; and which proceeds are now in the hands of

\* No 35. p. 699.

Robert Maxwell, the trustee, effecting to the debt due by Dickson to Ebenezer Hepburn. No 84.

Lord Ordinary, *Gardenston*.

For Ramsay, *Crosbie, Corbet*.

For Grierison, *Ilay Campbell, Alex. Fergusson*.

*Eql. Dic. v. 3. p. 41. Fac. Col. No 108. p. 203.*

Stewart.

1784. December 11. ROBERT DAVIDSON against DANIEL MURRAY.

DUNCAN MACFARLANE sublet a house, of which he was the tenant, to Peter Wilkie, for a definite period; and, along with the house, he let the greatest part of the furniture, which was his own property. On Macfarlane's removal, accordingly, Wilkie entered into the sole and exclusive possession of the house and of the furniture.

No 85.  
Not competent to attach by arrestment, household furniture in the occupation of a third party.

Davidson, a creditor of Macfarlane's, arrested the furniture as in Wilkie's possession; and a sequestration of Macfarlane's effects was likewise awarded; but this happened more than thirty days posterior to the arrestment. A competition, however, ensued between Davidson and Murray, factor under the sequestration, which depended on this point, Whether or not the above arrestment was a habile and effectual diligence.

THE LORD ORDINARY found, That arrestment in this case was an improper and inept diligence; and therefore preferred the factor.

In a reclaiming petition it was *pleaded*, All moveable effects of a debtor must be subject to the diligence either of arrestment or of poiding. The operation of the last is an immediate and complete transference of property; and, by consequence, the proprietor's right of possession is here presupposed. The forms, too, by which this diligence is executed, indicate the same idea; there being essential to these, the assuming of possession, and the carrying of the goods to the market-cross. For to deprive, either during a longer or a shorter period, of a possession which he holds by legal right, any one man for the debt of another, whether the proprietor or not, would be a violation of justice. As this arrestee, then, had such a title to the exclusive possession of the subjects in question, it follows, that here poiding could not take place.—Arrestment, on the other hand, is undoubtedly the proper diligence to attach moveable effects, whether fungibles, as money, or *ipsa corpora*, while in the possession of third parties. It has indeed been questioned, whether they could be arrested in the hands of a mere depositary, since he might not be deemed to hold the proper possession; but, even in that case, this diligence was found competent; 10th December 1760, Creditors of Appin, No 79. p. 749. An incongruity has been figured to arise in the arrestment of household-furniture, from the embarrassment to which the temporary occupier of a room in another person's house might be thus exposed; and it has been likewise said, that,