

ficient to yield a reversion, Mr Gardiner used arrestment in the hands of the purchaser. To this arrestment it was *objected*, That the only competent mode of affecting the reversion of the price was by adjudication; and

THE LORDS found, ' That an arrestment is not a habile way of attaching or affecting the reversion of a bankrupt estate, sold under the authority of this Court, in the hands of the purchasers thereof.'

Lord Ordinary, *Westhall*. Aēt. *G. Ferguson*. Alt. *Nairn*.
Stewart. *Fol. Dic. v. 3. p. 40. Fac. Col. No 92. p. 177.*

No 59.

1794. December 5. ROBERT WATSON *against* ALEXANDER MACDONALD.

WILLIAM MACDONALD assigned a lease of an heritable subject to James Macdonald, in security of certain personal debts. The subject was in possession of sub-tenants, from whom the assignee drew the rents. The assignation was intimated to the landlord.

Robert Watson, creditor of James, executed an arrestment in the hands of William Macdonald, and afterwards raised a process of furthcoming against him, in which appearance was made for Alexander Macdonell, trustee on the estate of James, which had been sequestrated after the date of the arrestment.

William Macdonald likewise raised a multiplepoinding.

Alexander Macdonell

Pleaded: The debts were made real, by the assignation, and consequently became the subject of adjudication, not of arrestment. The possession on the lease being equivalent to investiture, it prevented the application of the exception contained in the act 1661, c. 51. which declares, that money due ' by bonds, contracts, or other personal obligations, whereupon no investitures have followed,' may be attached by arrestment.

The arrester

Answered: It was the object of the act 1661, to make all debts, liable to arrestments, which are not secured by a complete feudal investiture; 20th February 1706, Stewart against the Creditors of Dundas, No 42. p. 705; Fount. 18th January 1695, Frazer against Cleghorn, No 19. p. 689. Now, leases, although by statute, declared good against singular successors, are in other respects mere personal rights.

THE LORD ORDINARY ' preferred Robert Watson, the pursuer of the furthcoming, to the sums in the hands of the raiser of the multiplepoinding.'

Upon advising a reclaiming petition, with answers, it was

Observed, in support of the interlocutor, That an assignation in security of a moveable debt, does not make it heritable, as to diligence: In *opposition* to it; That the arrestment was inept, because the debt was secured by an assignation to a lease clothed with possession, which is a *real* right, complete *sua natura*; which

No 6c.

A debt secured by an assignation to a lease of an heritable subject, followed with possession, cannot be carried by arrestment.

No 60. can only be carried by adjudication, and which a creditor by arrestment cannot renounce.

THE LORDS ' preferred Alexander Macdonell to the funds *in medio*.'

A reclaiming petition was, by a great majority (13th January 1795) refused, without answeres. (*See HERITABLE and MOVEABLE.*)

Lord Ordinary, *Ankersville.* For Watfon, *Hagart.* Alt. *Montgomery.* Clerk, *Sinclair.*
Douglas. *Fol. Dic. v. 3. p. 40. Fac. Col. No 139. p. 316.*

* * * When an heritable subject is vested in trustees, for payment of legacies, the interest of the legatees may be attached by arrestment; Douglas against Mason, 29th June 1796, *Fac. Col. No 226. p. 526. voce COMPETITION.*

See Hamilton against Drummond, p. 133.

In whose hands Arrestments may be used.

MUIRHEAD and M'MITCHELL *against* MILLER.

No 61.

An arrestment was not sustained, because used, not in the hands of him who was debtor to the common debtor, but in the hands of his factor.

IN an action pursued by William Muirhead and Thomas M'Mitchell, burgessees of Edinburgh, against William Miller, as assignee to Alexander Williamson, it was found, That a decret given against the said William Muirhead and Thomas M'Mitchell, their factors, in the town of Deik, at the instance of one Nicol Reid, who has obtained a sentence of 600 franks against Alexander Williamson, before the judges of London, and who by virtue of his sentence arrested in the said factors hands, the sum of 1100 franks, while they were appointed by the said William Muirhead and Thomas M'Mitchell, to deliver to the said Alexander Williamson, to be null and noways to defend the said merchants against the said assignee, because Alexander Williamson was not summoned to the giving of the decret, and because no arrestment could be made in the factors hands, of any sums of money addebted by the said Muirhead and M'Mitchell to Alexander Williamson, and whilk they were obliged to cause the said factors deliver to the said Alexander, in the town of Deik; because the factors were not debtors to Alexander Williamson, but the merchants themselves, in whose hands no arrestment was made.

Fol. Dic. v. 1. p. 57. Kerse, MS. (ARRESTMENT.) fol. 234.