

1808. June 7. JAMES BALFOUR *against* JOHN STEIN, and Others.

JAMES BALFOUR, a creditor of John Ferguson, on the 12th March, attached by an admiralty arrestment a vessel which it appeared belonged to Ferguson. The vessel was upon the stocks unfinished, and of course without masts. The arrestment was executed by affixing a copy at and upon the stern of the said sloop or vessel, she having yet no masts. After this arrestment, Ferguson, in conjunction with the trustee on the estate of Nairne and Company, who pretended to the property of the vessel, or at least a lien upon her in security of a sum advanced by them in part of the expense of building her, sold her to John Stein, who sold her to John Miller. Balfour presented a petition to the depute Admiral, praying that Ferguson might be imprisoned for breach of arrestment, and the other parties prohibited from carrying off the vessel, which they had by that time launched, till they found security to make it forthcoming. The Judge-Admiral, on the ground that the vessel belonged to the estate of Nairne and Company, assoilzied the defenders from this action.

No 5.
An admiralty
arrestment of
a vessel on the
stocks is
good.

Balfour advocated the cause; and the Lord Ordinary having remitted simpliciter to the Judge-Admiral, the cause came before the Inner-House by petition and answers. The Court had no doubt that the property of the ship remained with Ferguson, notwithstanding the transaction with Nairne and Company. But a question was raised about the validity of the arrestment.

It was pleaded for the defender, that Balfour's arrestment was null, because admiralty arrestments only applied to ships that were afloat, or at least capable of putting to sea, and were executed by fastening the copy on the mast; and that the regular way of attaching the vessel was by pointing.

For the pursuers, it was said, that this mode of admiralty arrestment was common, both of ships of which the masts were not yet built, and of boats that never had masts at all; and that it was sufficient, in order to make a vessel the proper subject of admiralty arrestment, that the building of her had gone so far that she was properly denominated a ship.

The interlocutor of the Court was: "Alter the Lord Ordinary's interlocutor; and find that the vessel in question was legally and effectually attached by the petitioner's arrestment; and remit to the Judge-Admiral to proceed accordingly."

On a reclaiming petition, with answers, they adhered.

Lord Ordinary, *Armadale*.
Agents, *P. Haikerston* and *G. Mill*.

Act. *Baird*.

Alt. *Monyhenny*.
Walker, Clerk.

M.

Fac. Coll. No. 50. p. 184.