

own time suspended; till which was discussed, he could have no sentence for making furthcoming. 3^{to}, By the late act of Parliament, all arrestments prescribe within five years, and those which were before the act, within five years from the date of the act, and the rest within five years from their own date. 4^{to}, This sum did never belong to the tutor, for the first bond being in conjunct-fee to the tutor and his lady, and the termination being upon the children of the other marriage, she is understood to be fiar, and her husband but liferenter. 5^{to}, Aplecorse is a singular successor, having right from Isobel as her tocher, who, in contemplation thereof, infect his son in his estate, and her in a liferent; so that he was *in bona fide*, neither knowing the arrestment, nor any fraud.—The pursuer answered to the first, That he had cited the tutors apparent heir, who might propose what defence he pleased; but seeing he had affected a sum due to the tutor in his life, and none was entered to represent him therein, and did not insist for any sum established in the person of the tutor's heirs, he was no further obliged. To the second: The pursuer's debt being once established by a liquid bond, the suspension against the same was only a general suspension against all the tutor's creditors by the English act, without any special reason against the debt, but only to suspend personal execution, the same was now void with that act, and needed not be discussed, nor did it impede the effect of arrestment, which is a real execution. To the third: Though arrestments prescribe within five years, if there be no citation, the action thereupon prescribes not till ten, being waiked every fifth year; and here there was an action before the act of Parliament. To the fourth: In all conjunct-fees between man and wife, the man is always fiar, unless the right appear to have been originally the wife's, and not the husband's *jure mariti*; so it is always presumed, that the means was the husband's. To the fifth: Arrestment being *nexus tenis*, it is effectual against all singular successors.

THE LORDS repelled all these defences, except the fourth, and before answer thereto, for clearing whether the sum lent did belong to the man or wife, they allowed either party to adduce what evidence they could, and especially if the tutor's lady had any heritable rights disposed of about the time of this bond; or if she had in her hands any means of her first husband's. (See HUSBAND and WIFE.)

Fol. Dic, v. 1. p. 58. Stair, v. 2. p. 674.

1681. January. 20.

RIDDEL against MAXWELL.

JAMES RIDDEL being creditor to John Riddell in Leith, arrests all sums due to him, in the hands of Mr. Patrick Bell; but, before intending action, to make furthcoming, Riddell dies, and now James Riddell pursues Mr. Patrick Bell to make furthcoming, and cites therein the heir of John Riddell, his debtor; Bell raiseth a double poinding against James Riddell, and Mr. William Maxwell, who had confirmed himself executor-creditor to John Riddell, in the sums due by

No 113.

Arrestment found effectual, although no process of furthcoming was raised till after the common debtor's death, and the arrester

No 113.
was preferred
to an execu-
tor-creditor,
who had ob-
tained de-
cree, but had
not proceed-
ed to poind.

Bell, who alleged, that an arrestment of moveables, being only a legal prohibition as an inhibition of immoveables, therefore, as the inhibition dies with the person inhibit, so must the arrestment with the debtor whose money is arrested.—*2do*, Though the arrestment could have effect after the debtor's death, yet it was a more regular and timeous diligence, to confirm the fums as in *bonis* of Riddell the debtor, and thereupon obtain decret against Bell: For, if Mr William had poinded, he would never repeat; seeing it is certain that arrestment hinders not poinding.—*3tio*, James Riddell can have no sentence till he call one representing John Riddell the debtor, who must be his executor, or his nearest of kin, whereas he has only called his heir, who represents him not *in mobilibus*.—It was *answered*, That there is no consequence from an inhibition to arrestment, because inhibition is against the debtor, prohibiting him to sell, but the arrestment is against the creditor, prohibiting him to pay; and, therefore, if Bell had died, the arrestment could not operate against his heir, because he was not inhibit; but the death of Riddell, the debtor, hinders not the effect of the arrestment; neither needs the executor be called, seeing Mr William is executor, who as executor compares.

THE LORDS found the arrestment effectual, albeit no process was raised thereon till after the death of the debtor, whose money was arrested, and preferred the arrester to the executor-creditor, though having obtained decret, seeing he did not poind thereupon. (See COMPETITION.)

Fol. Dic. v. 1. p. 58. Stair, v. 2. p. 839.

Breach of Arrestment.

No 114.
If corns are
arrested, and
the arrester
refuse to give
permission to
stack them on
the ground,
although cau-
tion to make
them furth-
coming be of-
fered; the
owner may
intromit at
pleasure,
without
breach of ar-
restment.

1518. July 6.

ABBOT OF PAISLAY *against* ADAM WALLACE.

GIF any man's cornis be arrestit at the instance of ane uther, and the maker thair of refusis to louse the said arrestitment, he beand requirit thairto be the awner of the saidis cornis; and cautioun beand offerit to him be the awner, to do thairfoir, that he aucht and fould do be the law: And zit gif the maker of the arrestitment beand desyrit be the awner, refusis to give licence to stack the cornis upon the ground, to be furthcumand as law will, the awner of the saidis cornis may justlie intromit thairwith and dispone thairupon, at his pleasour, and on na wayis thairthrow may be callit and convict for breking of arrestitment.

Balfour, (ARRESTMENT.) p. 538.