

Mill had conducted a process for Wright against Yoole. Yoole was found liable in expenses; arrestments to their amount were used in the hands of two of his debtors, who severally granted to him a promissory note, which he indorsed to Wright, who indorsed them again to Mill; the arrestments were then discharged. Wright became bankrupt, and the trustee on his sequestrated estate brought a reduction of the indorsation of these notes to Mill, as being granted within sixty days of bankruptcy. Mill in defence pleaded, That the arrestments, though in Wright's name, were for his behoof, intended to recover payment of the expenses debursed by him; and as he might have got the decree for expenses in his own name, he was entitled to a preference upon the promissory notes to their amount; and Lord Armadale (11th March 1799, found so accordingly. A reclaiming petition to the Court was refused (June 1799).

F.

The circumstances of the case of Campbell of Skerrington against Montgomerie were these: Skerrington's mother had advanced the expense of process, and when expenses were awarded against Montgomerie, though the Court found no precedent to entitle her to have this decree in her own name, it went out in name of the agent, and he, in a competition with Skerrington's creditors, who had used arrestments in the hands of Montgomerie, was preferred, though they pleaded, that their arrestments covered the expenses as well as principal sums found due; but the decree in his favour, the Court found, could not be defeated by a posterior arrestment.

F.

S E C T. VIII.

Hypothec upon a Ship for Furnishings and Repairs.—Hypothec for Seamen's Wages.—Upon the Cargo for Freight.

1682. *March.*SEAMEN of the GOLDEN STAR *against* PROVOST MILN and LUDQUHARN..

FOUND, that though mariners and seamen had not a hypothecation upon the ship for their wages of their last voyage, yet they had *jus insistendi* and *retinendi*, while in possession of the ship, even against a person who had bought her after the voyage.

Fol. Dic. v. 1. p. 419. Harcarse (HYPOTHECATION.) No 521. p. 145.

* * * P. Falconer reports the same case :

No 63.

1682. *January 4.*—CERTAIN seamen having, for their wages, pursued Robert Miln, who bought the ship from Ludquhairn at a roup, upon this ground, that they being violently put out of the ship, without payment of their wages, and having complained to the Council, Robert Miln, in obedience to the council's order, gave bond, wherein he obliged himself to make payment to the seamen of what the ship should be found liable for. It having been alleged for Robert Miln, That he had bought the ship upon a roup, and the seamen having no hypothec nor real right to the ship for their wages, he was not liable upon his bond to make payment; the LORDS found, that the seamen had *jus retinendi et insistendi* for their wages; and having been violently put out of the ship, they were in the case as if they were in possession; wherefore the LORDS decerned Robert Miln, upon his bond foresaid, to make payment to the seamen of their wages.

P. Falconer, No 15. p. 7.

* * * This case is also reported by Sir P. Home :

1682. *March.*

ROBERT MILNE having bought a ship at a roup, who having taken possession of her and put out the seamen, and they having complained to the Lords of Council that they were violently put out of the ship without payment of their wages; and the Privy Council having ordained Robert Milne to give bond to pay the seamen, for that the ship should be found liable; which bond was accordingly granted; and the seamen having thereafter pursued Robert Milne for payment of their wages,—*Alleged* for the defender, that the seamen having no interest or tacit hypothecation on the ship for their wages, he was neither liable upon his bond, nor as having intromitted with the ship, for payment of the seamen. THE LORDS found, that the seamen had *jus retinendi* of the ship for their wages, and that, being violently put out, they were in the case as if they had been in full possession of the ship; and therefore decerned the defender to make payment to them of their wages.

Sir P. Home, MS. v. I. No 246.

No 64.

There is a hypothec upon the cargo of a ship for freight and other duties, similar to *invoecta et illata* in urban tenements.

1683. *December.* MUIRE against The LORD LYON.

M'LEOD of Ashint having freighted William Muire's ship from Lochinvar to Hamburg, with a loading of beef, tallow, &c. and to return with a loading of other goods, which Ashint should put on board in Hamburg; and Ashint was obliged to pay L. 3 Sterling for each last of outward loading, and did give bond for L. 1004, payable at the city of Hamburg, and another bond for re-