

of mandates not duly followed out, goods perishing will not perish to the owner, but to the mandatar, who, by the obligation arising from law, had equally transferred the hazard upon himself, as the reverser does by paction. And, with regard to the second observation, *scil.* That the arrestment barred the declarator, it was *answered*, If the reverser was not purely creditor, but only such *sub conditione*, the arrestment behaved to follow the nature of the subject arrested, which being *ex eventu* declared to be the wadsetter's, and not the reverser's, the condition was purified; so as the arrestment could affect nothing, and be no *medium impedimentum*.

THE LORDS found, That in this case the arrestment did not affect the consign- ed money, without prejudice to insist, &c.

Fol. Dic. v. 1. p. 56. C. Home, No 122. p. 196.

1740. February 13.

THE CREDITORS OF LUDOVICK GORDON, *against* SIR HARY INNES.

A BILL being indorsed in trust for behoof of the common debtor, an arrest- ment, laid in the hands of the trustee, found effectual to carry the sum in the bill; and therefore was preferred to a second arrestment laid in the trustee's hands, after he got payment of the bill, and thereby became debtor in a liquid sum.

Fol. Dic. v. 1. p. 56.

* * The same case is thus reported by Lord Kilkerran.

Jan. 15. 1740. WHERE bills were drawn by Ludovick Gordon, on certain of his debtors, payable to one Falconer, which, by Falconer's oath, were instructed to be for the drawer's behoof; and Sir Hary Innes, as creditor to Ludovick the drawer, had arrested in Falconer's hand after the draught, but before Falconer had recovered payment from the debtors; the question was, If these arrestments in Falconer's hand did affect the sums in the bills? *Ratio dubitandi*, As Falconer had not properly the right to the money in him, but was only factor for recover- ing thereof, though he was liable to diligence for recovering the money, yet he was not debtor to Ludovick Gordon, till he had recovered the money.

Notwithstanding, the LORDS found 'That the arrestments in the hands of 'Falconer' did affect the sums in the bills,' for this reason, that, by the very draught of the bills by Ludovick Gordon upon his debtors, the right of the mo- ney was transferred to Falconer, who thereby became liable to account; and; for that reason, arrestment in Falconer's hand, was not only thought *habile*, but indeed to be the proper method of affecting the money; though it was at the same time observed, that had an arrestment been used in the hands of the debt-

No 50.

No 51.

An arrest- ment in the hands of a trustee, found effectual to carry the sum in a bill, in preference to an arrestment in his hands after the bill was paid.

No. 51. ors, it might, *favore creditorum* have been sustained, evidence being given that Falconer was but an interposed person.

N. B. The case of an arrestment laid in the hands of one who has a right in security, would be different; for that would not affect the superplus of the sums that might remain after payment of the debt. The reason is, that one having a right in security, is liable to no diligence, and, therefore, before he recovers the debt assigned, is possessed of nothing which the arrestment can affect.

Kilkerran, (ARRESTMENT.) No 8. p. 39.

1742. November 19.

Competition ROBERT RAE, &c. with JOHN NEILSON, &c.

No 52.

It is competent to affect the interest of a partner, in a copartnership, by arrestment. Arrestment in the hands of the other partners will affect this interest, tho' the subjects of their copartnership should be, at the date of the arrestments, abroad; provided they be afterwards made good to the company.

ROBERT and JAMES ROBERTSONS entered into a company-trade with George Bogle, &c. merchants in Glasgow, for a particular negotiation, the import of which was, that they should send out certain cargoes of goods for building a ship in Boston in New-England, and the remainder upon merchandize to be loaded aboard that ship, and others which should be hired; with the proceeds whereof new adventures outward were to be carried on in a running trade, for the profit of the joint adventurers: All which was to be managed under the direction of certain supercargoes to be sent abroad to reside, and of others who were to accompany the goods. This joint trade continued for some years, when James Robertson having died, and Robert Robertson become bankrupt, some of their creditors arrested in the hands of George Bogle, &c. the other joint adventurers with the Robertsons, and likewise used arrestment at the market-cross of Edinburgh, pier and shore of Leith, in the hands of certain factors for the two Robertsons residing abroad, in whose custody they supposed their debtors effects might be lodged.

In the course of the furthcoming, which was brought at the instance of the creditors who had used arrestment, Messrs Bogle, &c. (who raised a multipointing) emitted a declaration, giving a detail of the joint adventures in trade, that they had with the two Robertsons; and declared, that at the time of the arrestments, they were not debtors to the Robertsons; on the contrary, *they* were debtors to the last adventure in L. 300 Sterling: That the declarants had disposed of the ship and cargo at the particular rates specified in their declaration; and that there were certain sums for which their factors abroad were accountable to the partners.

And this declaration was held as evidence, by all parties, of the interest which the Robertsons had in their adventure with Messrs Bogle, &c.

The creditors of the Robertsons, who had neglected to use arrestment, objected to the furthcoming; *imo*, That the partners, in the present case, were not only not erected into a body-politic, or corporate, but that there was not even a contract of copartnership among them: So that it was new to consider this copart-