

petent to the Viscount for the current term, paid according to paction *per* advance, nor yet for a subsequent term.

No 93.

*Alleged* for the arrester:—That the Viscount's aliment, or liferent, being paid *per* advance, could never be arrested, if the arrestment did not affect subsequent terms.

*Answered*: The aliment was fairly and justly constituted without the least design to defraud any creditor; and the punctual payment *per* advance, according to paction, can be no ground to alter the case in law: For no man is bound to keep his creditors money from him one moment after it falls due, to wait for arresters.

THE LORDS upon advising the oath, with the Viscount's disposition to the deponent, found the debt acknowledged to be of the nature of a reserved liferent, affectable by arrestment; and therefore decerned,

*Fol. Dic. v. i. p. 58. Forbes, p. 4*

1795. March 10.

ADAM LIVINGSTON, and Others, against GEORGE FARQUHAR KINLOCH.

No 94.

THE rents of the estate of Craighforth (the tenants of which, in general, enter into possession at Martinmas, and pay their rents at Whitfunday and Martinmas, by equal portions) having been arrested by different creditors of the landlord, the tenants raised a process of multiplepoinding, in which the rents payable at Martinmas 1792 were claimed by Colonel Livingston, and others, upon an arrestment executed on the 12th of November 1791; and, by Mr Farquhar Kinloch, upon an arrestment executed on the 18th June 1792.

When the rent of the current year is payable at Whitfunday and Martinmas, an arrestment before Whitfunday will only attach the rent payable at that term.

The LORD ORDINARY, in respect it is admitted that the rents of the estate of Craighforth are payable at two terms in the year, Whitfunday and Martinmas, in equal portions, found, that the arrestments laid on in the hands of the tenants, on the 12th November 1791, attached only the current rent that became payable at Whitfunday 1792, and that the arrestments on the 18th June 1792, attached the rents that became payable at the term of Martinmas following.

In a petition for Colonel Livingston against this interlocutor, it was stated, That not only arrears due by a tenant, but current rents may be attached by arrestment. That by current rents, are meant those *quorum dies cessit, sed nondum venit*. Erk. b. 3. t. 6. § 9; and that although rents may be made exigible by termly payments, the obligation to pay a year's rent is an *unum quid*, which cannot be divided, and is wholly incurred by possession for the smallest part of the year; and that, consequently, the rents claimed were *current* on the 12th November 1791; on which account, accordingly, the landlord might then have sequestrated the stock of the tenant for payment of them.

No 94.

THE LORDS, unanimously, refused the petition without answers.

Lord Ordinary, *Ankerville*.For the Petitioner, *D. Cathcart*.Clerk, *Menzies*.*Fol. Dic. v. 3. p. 44. Fac. Col. No 167. p. 394.**Douglas.*


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### Whether Arrestment reaches *Acquirenda*.

1711. *January 25.*ROBERT MENZIES in Tegermauch, *against* JAMES GRAHAM, Merchant in Anstruther.

No 95.

Arrestment of a defunct's effects, some months before the common debtor was decerned executor dative *qua* nearest of kin, was found not validated by the subsequent confirmation; so that an assignation, after the confirmation, was preferred to the arrestment.

ROBERT MENZIES, April 29, 1707, as creditor to Alexander Menzies, now of Shian, arrested in the hands of the commissioners of the equivalent, a sum due by them to the deceased James Menzies of Shian, as belonging to the arrester's debtor, as executor dative *qua* nearest of kin, decerned and confirmed to James Menzies, June 19, 1707, and insisted in a furthcoming. Compearance was made for James Graham, who craved to be preferred upon an assignation from Alexander Menzies to the said debt, of the same date with the cedent's confirmation. Because, *imo*, At the date of the arrestment (though prior to the assignation) no debt was established by confirmation in the person of Alexander Menzies, and arrestments affect not *acquirenda*. *2do*, The benefit of the confirmation, which was expedite in the person of the common debtor by Mr Graham, for supporting his assignation, cannot accrue to the arrester: Seeing *actus agentium non operantur ultra eorum intentionem*; January 16, 1663, Stair, v. 1. p. 156. *voce* VIRTUAL, Tenants of Kilchattan *contra* the Lady and Major Campbell; June 20, 1676, Brown *contra* Smith, Stair, v. 2. p. 428. *voce* COMPETITION.

*Alleged* for the pursuer:—His arrestment being prior to the others assignation, he ought to be preferred, though no confirmation had been expedite in the person of Alexander Menzies till some months after: Because, Alexander had, the time of the arrestment, a natural and radical right to the money *jure sanguinis*, as nearest of kin, act 120. Parl 7. Ja. V.—act 14. Parl. 22. Ja. VI.: Which being affected by the arrestment, the supervening confirmation, as accessory thereto, must accrue to the arrester, and be drawn back *fictione juris* to the date of the arrestment: As a creditor arresting a conditional debt would be preferred to another arresting the same after the condition is purified; Dirleton's Doubts and Quest. page 8. *2do*, Albeit the confirmation might have accrued to him, had he confirmed in the terms of the act of Parliament 1695; it must have its full effect in favours of all the creditors, the common debtor being simply decerned dative *qua* nearest of kin, without any relation to the assignation; June 21, 1671, Neillon *contra* Menzies\*. And it can hardly be supposed that the confirmation

\* Stair, v. 1. p. 736. *voce* TACK.