

1796. December 7.

GAVIN HADDOW *against* ARCHIBALD CAMPBELL and COMPANY.

DANIEL MACINTOSH of Antigua, remitted to Allans and Gow of Glasgow, to whom he owed L. 38 : 12s. a bill for L. 200 on Drummond and Company of London. The bill was inclosed in a letter, which mentioned that he meant soon to draw on them in favour of his other creditors.

The bill was received by Allans and Gow on the 2d January, and was payable on the 10th March 1794. On the 25th February 1794, after the bill had been accepted, an arrestment was used by Andrew Pitcairn in the hands of Allans and Gow, on a debt due by Macintosh, which was afterwards acquired by Gavin Haddow.

Macintosh, on the 30th January 1794, drew a bill on Allans and Gow, in favour of Archibald Campbell and Company, for L. 89 : 15s. payable thirty days after sight. This bill was protested for non-acceptance on the 12th April, and for non-payment on the 15th May 1794, before which time the bill on Drummond and Company was paid.

On the 9th December 1794, Gavin Haddow executed a second arrestment in his own name. He afterwards insisted in a process of furthcoming, which was conjoined with a multiple-poining on the part of the arrestees.

Archibald Campbell and Company objected to the validity of the original arrestment. Gavin Haddow in support of it,

Pleaded; An accepted bill is, in law, considered not merely as a document of debt, but as equivalent to goods or money; and, accordingly, no extrinsic exception can be stated against payment of it. At the date of the arrestment, therefore, Allans and Gow were in the same situation as if they had held money belonging to Macintosh equal to the amount of the bill. Its acceptance by Drummond and Company laid them under the necessity of paying it to Allans and Gow, who therefore became the sole creditors in it, so much so, that an arrestment could not have been used by a creditor of Macintosh in the hands of the Drummonds; and the claim which Macintosh had against Allans and Gow from that period, was merely to account for the surplus, after payment of their own debt. They were his trustees *quoad ultra*; and it is a settled point, that the interest of the trust may be attached by arrestment in the hands of the trustee, whatever be the nature of the trust-estate, Ersk. B. 3. T. 6. § 5. and 6.; Kilk. v. Arrestment, No 8. 10. No 51. p. 715. and No 52. p. 721. of this Dictionary; 25th February 1780, Grieron against Ramsay, No 84. p. 759.; 14th January 1779, Macleod against Crichton, Fac. Col. No 53. p. 94. *voce* VIRTUAL.

Nor does it make any difference that the term of payment had not arrived at the date of the arrestment. The acceptance of the bill had transferred the debt to Allans and Gow, and the eventual claim which Macintosh had against them could only be attached by arrestment.

No 87.

A merchant abroad having remitted a bill to a company in Scotland, to whom he owed part of its amount, in a letter, which mentioned that he meant soon to draw on them, in favour of his other creditors; an arrestment, used by one of them, in the hands of the consignee, before the bill was paid, but after it was accepted, was found to be incompetent.

No 87.

Answered, imo, A bill of exchange, notwithstanding its statutable privileges, is a mere *nomen debiti*. When Allans and Gow received the bill in question, they were creditors of Macintosh. The receipt of it made no alteration on their situation, except giving them additional security for payment; and it is incompetent to arrest a security in the hands of a creditor of the common debtor; 22d June 1742, Carmichael against Mosman, No 72. p. 740.; 5th March 1767 and 14th July 1768, Creditors of Thomson and Tabor, No 81. p. 753. A creditor holding a security is in a very different situation from a trustee. He is neither liable in diligence, nor can he be forced to denude; and had Drummond and Company been subject to the jurisdiction of the Court, an arrestment would have been competent in their hands. While, therefore, the arrestment by Haddow is ineffectual, the draught in favour of the respondents, with the protest taken on it, after Allans and Gow had received payment of the bill, must be considered as a completed assignation to the fund *in medio*, to the extent of the debt.

2do, As the bill was deposited with Allans and Gow, for the purpose of enabling Macintosh to draw on them in favour of his other creditors, the bill granted to the respondents, and which was prior in date to the arrestment, is to be considered as an assignation intimated before the former was executed; Erskine, b. 3. tit. 6. § 7. 23d January 1756, Souper against Creditors of Smith, No 76. p. 744. 9th February 1759, Stalker against Aiton, No 77. p. 745.

THE LORD ORDINARY, 'in respect the fund *in medio* was a *nomen debiti*, and that the arrestment should have been laid in the hands of the debtor, found the arrestment at Andrew Pitcairn's instance, when the arrestee was only in possession of the instruction of debt, was inept, and therefore preferred Archibald Campbell and Company to the fund *in medio*, upon the interest produced for them.'

On advising a petition and answers, the competency of an arrestment by Macintosh's creditors in the hands of Drummond and Company, was doubted, the *jus exigendi* being invested in Allans and Gow; and it was stated, that the decisions of the Court had gone to establish the competency of an arrestment, in all cases of vested rights, where an adjudication could not be led.

But, on the other hand, it was observed, The fund *in medio*, at the date of Pitcairn's arrestment, might have been competently arrested by the creditors of Macintosh, in the hands of Drummond and Company, had they resided in Scotland, though the arrestment so used would have been defeasible by an onerous indorsation. A bill of exchange cannot be attached by arrestment as a *corpus* more than a bond or other obligation, in the hands of a trustee, before he has received payment of it. The terms of the letter inclosing the bill do not affect the question, as it did not specify in whose favour the draughts were afterwards to be granted.

THE LORDS adhered. (See BILL of EXCHANGE.)

Lord Ordinary, *Justice-Clerk Braxfield*.
Alt. *Cranston*.

Douglas.

For Haddow, *Dav. Williamson*.
Clerk, *Gordon*.

Fac. Col. No 6. p. 15.