

S E C T. IV.

Arrestment of the Debtor's Effects.—Arrestment in the hands of a person not subject to the jurisdiction.

1610. December. ELVIES against VERNOR.

ARRESTMENT was granted by the Lords at the instance of Elvies, Englishman, upon the goods of Vernor, Englishman, neither of them being in this country, *animo remanendi*; and upon bonds made in England, not bearing any condition of payment to be made in this country; which I judged to be a dangerous example and preparator, to our merchants trafficking in England.

Fol. Dic. v. 1. p. 329. Haddington, MS. No 2055.

No 45.

1683. December. THOMAS YOUNG against ARNOLD, or ARNAUD.

IN an exhibition raised by Captain Young, of a testament made by John Scouler at Rouen, against Mr Arnold a Frenchman, there being no compearance for the defender, the pursuer gave in a bill to the Lords, representing, that Arnold colluded with some persons at Rouen, to suppress Mr Scouler's testament, and were withdrawing his effects out of Scotland, so that when he should be holden as confessed upon the having of the testament, he would have no estate here to be affected for damage and interest; and therefore craving, that the petitioner might be allowed to retain any of Arnold's effects that were in his own hand, till the event of the exhibition, and to arrest such as were in other hands, till the defender found caution *judicio sisti et judicatum solvi*.

Answered for Mr Arnold; That he being a stranger Frenchman, not liable to the Scots laws, either *ratione originis* or *domicilii*, was not bound to compear; and though the Session be *forum competens* to all causes concerning lands here, wherein strangers have interest, yet moveables, and moveable obligations of whatever nature, *quæ sequuntur personam*, should not be considered as local; for as to these *actor debet sequi forum rei*.

Replied for the pursuer; By the custom of other places, and of our Admiral court, strangers pursued here may be arrested, till they find caution *judicio sisti et judicatum solvi*, for securing the pursuer's payment in the event of the plea; and an arrestment upon a dependence, or otherwise, in common form, would not be effectual, seeing a forthcoming could not be obtained, in respect that requires the calling of the principal party, who would not be liable to compear.

No 46.

The effects of a Frenchman in Scotland might be arrested till he found caution to the value thereof, *judicio sisti et judicatum solvi*.

No 46.

2. There is no difference whether the pursuer's process be for payment of money, or delivery of goods, or exhibiting of writs, &c. where damage and interest may result.

'THE LORDS ordained Mr Arnold's effects in Scotland to be secured till he find caution *judicio sisti et judicatum solvi*, in so far as these effects amount to, and no more, though the damage and interest should exceed the effects.'

Fol. Dic. v. 1. p. 329. Harcarse, (EXHIBITION.) No 487. p. 133.

. Sir P. Home reports the same case :

THOMAS YOUNG merchant in Edinburgh having given in a petition to the Lords, making mention, that Mr Scouler, factor at Rouen, having entrusted his cabinet to the keeping of Mr Arnold factor there, who was the said Mr Scouler's co-partner in trading; in which cabinet there was Mr Scouler's testament, whereby he did leave Mary Kirkland, his niece, the petitioner's wife, his executrix and universal legatrix, and likewise his count-books and other papers of great consequence; and that the petitioner having pursued Mr Arnold here before the Lords, for exhibition and delivery of the testament, and for the payment of the damage and prejudice that arise to him by Mr Arnold's keeping of the testament, count-books, and other papers, he still postpones and delays the exhibition of these papers, pretending that the testament was not made with the solemnities required by the law of France; and that he being a Frenchman, was drawing his effects out of Scotland, of purpose to make any sentence that the petitioner should recover against him ineffectual; and seeing that an ordinary arrestment upon a dependence may be loosed upon caution, and that Mr Arnold is still drawing bills upon the petitioner, who was factor for the said Mr Scouler and Mr Arnold in copartnership, which he will be obliged to answer, unless he were allowed to retain in his own hand; therefore craved, that the Lords might grant letters of arrestment for securing all goods and effects belonging to Mr Arnold in Scotland, ay, and while he should find caution *judicio sisti et judicatum solvi*, as to any actions depending at the petitioner's instance against him, and that he may be allowed to retain any effects in his hand belonging to the said Mr Arnold, ay, and while the said caution was found, and the LORDS did grant the desire of the petition.

Sir P. Home, MS. v. 1. No 491.

. This case is also reported by Fountainhall :

1684. February 22.—MR SCOULER factor at Rouen being deceased, Thomas Young merchant in Edinburgh being creditor to him, did, by a special deliverance of the Lords upon a bill, arrest all his effects and moneys owing to him in Scotland. Monsieur Arnaud, who was partner with Scouler, offers to draw his part

of the effects out of Scotland; Thomas Young opposed it. 'THE LORDS found, after a great debate, that before he can remove his money, he behoved to find Thomas Young caution *judicio sisti et judicatum solvi* in Scotland, for what *ex eventu* he and Scouler his conjunct should be found debtors to him.' Though in strict law, *actor sequitur forum rei*, and Young if he had ought to crave of Arnaud should pursue him in France.—But *tutius est incumbere rei quam personæ*.

Fountainball, v. 1. p. 274.

No 46.

1733. July 26.

COURTS against MILN.

AN arrestment at the market-cross of Edinburgh, pier and shore of Leith, of effects belonging to the common debtor, in the hands of an English merchant, residing at Bristol, and who had no *forum* in Scotland, was found null and inept. See APPENDIX.

Fol. Dic. v. 1. p. 330.

No 47.

1758. November 21. WILLIAM FORD Merchant in Berwick, Supplicant.

FORD, a merchant residing in Berwick, intended to apply to the Sheriff of the Merse, for a border warrant to arrest the goods of Tabor and Thomson, two merchants in London, his debtors; but was advised that the Sheriff might have a difficulty in granting this warrant, as in other cases, because Ford was himself an Englishman, and resident in England. A petition was therefore given in to the Lord Ordinary on the bills; who reported the case to the Lords.

THE COURT was unanimously of opinion, that the Lord Ordinary should grant the warrant for arrestment *jurisdictionis fundandæ causa*; and approved of this method of applying to the Court, seeing a petition to the whole Lords was unnecessary, as there was no need of intimation to the defenders.

Reporter, Lord Justice-Clerk.

W. J.

Fol. Dic. v. 3. p. 240. Fac. Col. No 136. p. 252.

No 48.

A stranger is entitled to apply to this Court by a petition to the Lord Ordinary on the bills, for a warrant to arrest *jurisdictionis fundandæ causa*.

1773. June 17.

MESSRS ASHTON, HODGSON, and Co. of London, Merchants, and their Attorney, against SARAH MACKRILL Widow, and CATHARINE MACKRILL, Daughter of the deceased John Mackrill of London, Woolstapler, and their Attorney.

THE pursuers being creditors upon certain receipts, or notes, granted to them by John Mackrill of London, which were due at the time of his death; and

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Arrestment
*jurisdictionis
fundandæ causa*