

longing to Pourie, his debtor ;—the first defence was, Goods in copartnery are not arrestable, else this would mar all commerce and transmission. ANSWERED, —They must be affectable by some diligence, and adjudication is not proper for a moveable subject ; *ergo*, they must be subject to arrestment. The Lords repelled the defence.

2do. ALLEGED,---They had no proper nor natural possession, the same being in common amongst them all. ANSWERED,---Their possessing *pro indiviso* is sufficient to found an arrestment. The Lords also repelled the *second* defence.

Then, 3tio. ALLEGED,---No communion or society could hinder a *socius* to provoke his co-partners *ad divisionem, quia nemo cogitur manere in communione* except he please : And, *ita est, auctore prætore*, by warrant of a magistrate we divided the goods, and Balfour got Mr Pourie your debtor's share and proportion, against whom you may insist. ANSWERED,---Though you might lawfully divide, yet, I having put you *in mala fide*, by arresting before, you should have called me before you gave up his share. REPLIED,---You have no prejudice, for it is yet extant in that depository's hands ; and you may vindicate the same, there being a *nexus realis* which follows the arrested goods. DUPLIED,---I will not enter into that debate, Whether arrestment be only a personal prohibition, or if it affects the goods wherever they go. You could not change the nature of my action by a deed of yours ; and, where there is *difficultas conveniendi*, it is more reasonable you be at that trouble of recovering the goods than I.

The Lords decerned against Galt, &c. reserving their recourse against the haver of the goods ; and, he being called *incidenter*, they were ordained instantly to debate. *Vol. I. Page 810.*

1698. *January 8.* HAIG of BIMERSYDE *against* SIR PATRICK SCOT of ANCRUM.

IN a process, betwixt Haig of Bimersyde and Sir Patrick Scot of Ancrum, about their proportion of cess and teinds, there was an unwarrantable addition made to the interlocutor of the Lord Arbruchell, Ordinary in the cause, by John Blair, one of the servants in Mr James Dalrymple's chamber ; and he being called, and acknowledging he did it by order of one John Scot, an extractor there ;—the Lords, finding it *mali exempli*, they fined Blair only in five dollars, his being but an act of ignorance, and Scot in fifteen dollars to the poor, and sent him to prison, in the meantime, as more guilty. *Vol. I. Page 810.*

1698. *January 8.* LADY STAPLETON *against* The EARL of ANNANDALE.

THE Lady Stapleton gave in an appeal and protestation, for remeid of law, to the Parliament, against a sentence pronounced in favours of the Earl of Annandale, against her and her tenants, upon a comprising, which she ALLEGED was extinct by intromission within the legal ; and her witnesses were not allowed to be interrogated as to some part of these lands, called Raccleugh, because his possession thereof was several years prior to his apprisings. *Vol. I. Page 811.*