ARRESTMENT.

ment could not reach any further than for the tack-duty arrefted, which was due the time of the arreftment, but not for any term following the arreftment, because arreftment being a legal execution, can no more proceed upon a debt, before the term that the debt be due than apprising; and further *alleged*, That they had made payment of the fublequent terms to the debtor, which they were in *bona fide* to do, knowing no law nor cuftom to the contrary.

THE LORDS repelled the defence, and found the arreftment to be valid for that term's duty that was then running, and found that the arreftment was rather like to an inhibition than an apprifing, which gave prefent payment.

Fol. Dic. v. 1. p. 57. Stair, v. 1. p. 649.

*** Gosford reports the fame cafe thus ::

In an action to make arrefted goods furthcoming at the inflance of the relief of. Mr George Lefly, who had arrefted in the hands of Duke Hamilton the fum of money due to Cunningham, who was cautioner in a tack for the tenant: The queftion was, That the purfuer had arrefted for a term's duty which was only in cursu, and the term not come, before which it was not due.—It was alleged, That the tenant himfelf not being liable, neither he, far lefs his cautioner, could be decerned to make payment as debtor; and confequently, cautioner's money could not be arrefted.—The LORDS, notwithftanding, did find the arreftment valid, in refpect that the fubfequent term's duty was conflituted by a preceding tack, for which arreftment might be ufed, as being only *pignus prætorium*, which did refolve in a fecurity, that the term of payment being paft, the fums arrefted might be made furthcoming; and in law ubi cessit dies licet nondum venit, fuch diligen, ces are allowable.

Gosford, MS. p. 78.

1705. January 31.

JOHN CORSE, Writer, against GEORGE MASTERTON, Portioner of Bothkenner.

The deceased George Masterton infefts Margaret Dalrymple, his spoule, in the liferent of some houses. After his death the marries one Muirhead; and he being debtor to Corfe in a fum of money, Corfe arrefts the rents in the tenants hands, as falling under his debtor's jus maries. George Masterton, the first debtor's heir, and the fiar of the lands, compears, and alleges, Corfe's arrestment is null, because the subject arrested was no debt, and had no being at the date of the arrestment, because the existence of the debt depended on the two joint lives of the hubband and the wife; and if any of the two had died before the term, there was nothing due, and so the arrestment fell to the ground; and what makes it due, is the liferentrix outliving the term, and till then no arrestment could affect it; for, before that, it was a non ens, and the arrestment had no formdation

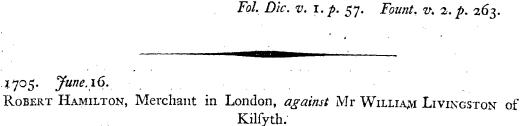
No 02. An arteftment was laid upon a wife's annuity, payable out of land, for a debt due by the hufband, who had right to the annuity jure mariti The arreftment found to affect even the current : term's rent;

No 91. gainft Tenants, No 89. P. 765.

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No 92. although, it being uncertain whether the wife would live till the term, dies nee ceffit nec vonit.

till they had outlived the term.—Answered, This is a notion never before advanced; for though the arrestment would eventually be ineffectual if either the wife or hufband had died before the term, yet being laid on currente termino, and they coutliving it, it is certainly a valid diligence; and has been to decided in a competition betwixt an arrefter and an affignee; 27th July 1673, Creditors of Scot competing, No 39. p. 702.; and Stair, lib. 3. tit. 1. § 29. allows arreftments of debts before the term of payment; and arreitments on conditional debts are valid, as Dirleton observes, voce Jus mariti, and cites l. 18. D. de reg. jur. and the cafe is clear in annuis legatis, § 3. Institut. de verb. obligat. 1. 16. § 1. D. eod. tit. -Replied, There is a great difference betwixt this cafe and arreftments on debts whereof the term of payment is not come; for there dies cessit licet non venit; but here it cannot be fo much as faid that dies cessit; for non subest debitum omnino till the term come; and they might as well arrest for all subsequent terms that the liferentrix shall happen to live, as for that current one. The Lords thought the caffing of fuch arreftments might lay a foundation to defraud the creditors of liferenters; for, if their rents could not be arrefted till the term were paft, then by compounding and giving down a little they might uplift it fummarily, and fo prevent all diligence of creditors; and therefore the Lords fuftained Corfe's arreftment as valid to affect that current term, and repelled the allegeance of nullity against it.



No 93. A perfon difponed his eftate, referving an annuity, to be paid per advance quarterly, under name of aliment. An arreftment in the hands of the disponee, found to affect the current term, although, none of the quarterly payments per advance, were at the time outstanding.

ROBERT HAMILTON, being creditor to the Vifcount of Kilfyth, arrefted twice in the hands of Mr William Livingston of Kilfyth, his brother, and raifed a furthcoming: In which Mr William deponed, 'That he was obliged to pay yearly to the Vifcount, 2000 merks of aliment, and that quarterly *per* advance, conform to a disposition, made by the Vifcount, of his estate to the deponent, referving to himself the faid annuity. And that the time of the arrestment he was refling none of these quarter payments, they having been paid *per* advance; and that he was debtor no other manner of way to the Vifcount.'

The defender craved to be affoilzied, in refpect arreftment cannot affect fubfequent terms, but only bygone refts, and the current term, 28th July 1669, Leflie contra Cunninghame, No 91. p. 766. And he was refting nothing of bygones, and had paid *bona fide* the current terms arrefted *per* advance. For an arrefter can be in no better condition than the perfon whofe debt is arrefted; where he can have no action for direct payment, neither can the arrefter have for making furthcoming. Now the time of the arreftment no action was com-