

no arrestment laid on in the wife's hands, could stop his disposal of the same for the use of his family; and, if they be, since the dissolution of the marriage, she has a preferable right to them, in virtue of her contract of marriage, as executrix-creditor.—*Answered*, If wives, made factors, were accountable for their husband's debts to his creditors, by their intromissions, it were a compendious way of frustrating all his debts; and for wives to enhance their means, to the prejudice of the legal embargo by arrestments. And Stair's words are misapplied; for, though he asserts arrestments laid on in factor's hands, to be useless, yet he says it is otherwise if it be also laid on in the constituent's hands, which is Gammalshiehl's case; neither doth it alter the case that the principal debtor is dead *medio tempore*, for the calling his representatives supplies that; See 19th February 1667, Glen *contra* Home, (Stair, v. I. p. 443. *voce* ESCHEAT.) It is true, if my debtor's debtor, in whose hands I lay an arrestment, die, then the arrestment perishes with him, and must be renewed in his successor's hands, being personal; but that is not the present case. And as to her retention as executrix-creditor, the Lords have preferred an arrester to an executor creditor, albeit the furthcoming was raised after the debtor's death.—THE LORDS repelled the defences, and sustained the arrestment, and ordained her to depone what was in her hands at the time, reserving her to be heard upon any title, by which she may crave preference to him, but found the debt behaved to be first constitute.

*Fol. Dic. v. I. p. 57. Fount. v. 2. p. 343.*

1709. January 18.

JAMES DONALDSON, Merchant in Edinburgh, *against* ARCHIBALD COCKBURN, Merchant, and late Baillie there.

IN a competition betwixt Baillie Cockburn and Mr Donaldson, creditors of Patrick Haliburton, merchant in Edinburgh—THE LORDS refused to sustain an arrestment used by Donaldson, in the hands of Mrs Helen Swyntoun, spouse to Captain Francis Charteris, when her husband was out of the kingdom, to affect a debt owing by the Captain to Haliburton. Albeit the Lady had an ample faculty and commission at the time to uplift, receive, assign, discharge and dispose of all sums, goods, gear, and others whatsoever, belonging to her husband, and, if needful, to pursue therefor. Because, if a decret of furthcoming against a factor, without calling his constituent, were sustained, the constituent's whole estate might, without his knowledge, be evicted out of his factor's hands, and perhaps for debts not truly due.

*Fol. Dic. v. I. p. 57. Forbes, p. 300.*

No 64.

No 65.

Arrestment in the hands of a factor, of a debt due by the constituent to the arrester's debtor, not a competent foundation of a process of furthcoming, the constituent not being called.