

No 96.

1739. February 7. CREDITORS of CLUNES against SINCLAIR.

FOUND, That arrestment on a debt due to a wife, carried no more than the annual rent fallen due at the time of the arrestment and the current term; and that the proper diligence to carry the *ius mariti*, was adjudication against the husband. (See Lord Kilkerran's report of this case, No 49. p. 713.)

No 97.

1744. February 15. AGNES DICKIE, against HALL and his CAUTIONERS.

FOUND, That an arrestment upon a dependence did not entitle the arrefter to a furthcoming for the expences laid out in that depending process after the arrestment, but only for the sum due by the common debtor at the date of the arrestment.

Fol. Dic. v. 3. p. 44. Kilkerran, (ARRESTMENT.) No 13. p. 42.

No 98.

Current term of a separate aliment to a wife, carried by an arrestment used prior to the term of payment.

1761. June 16. DANIEL SETON, JOHN CLELAND, and Others, Creditors-Arresters of Margaret, Countess of Caithness, against The COUNTESS of CAITHNESS, and THOMAS HEDDERWICK, her Assignee.

In the year 1741, the Earl and Countess of Caithness entered into contract of voluntary separation, by which the Earl obliged himself to pay to my Lady L. 1000 Scots yearly, for separate aliment; which she accepted of in full of all she could ask of the Earl, with liberty to either of them to renounce this agreement upon notice to the other party.

In 1754, the Countess notified to the Earl her repudiation of the contract 1741, and brought an action for a suitable separate maintenance, in which she obtained judgment, finding her entitled to L. 200 Sterling yearly, over and above the interest of her own proper funds, as the same should, from time to time, be settled and liquidated, commencing at the term of Martinmas 1756, and payable by two equal moities at Whitfunday and Martinmas yearly.

In June 1757, Daniel Seton, John Cleland, and others of the Countess's creditors, used arrestments in the hands of the Earl, with a view to attach the current term's annuity, which was payable at Martinmas thereafter.

Upon the 5th November 1757, the Countess granted an assignation of that term's annuity to Thomas Hedderwick, and others of her creditors. The Earl

brought a multiplepointing, in which a competition ensued betwixt the arresters and the assignee.

No 98.

It was argued for the assignee, That there was no aliment due or payable by the Earl of Caithness at the time when the arrestments were used in his hands; and therefore there was no subject which could be affected by these arrestments: That an aliment was properly due *de die in diem*, though, by the Lords decree, the term of payment be suspended to Martinmas that year; and therefore no more could be affected by the arrestments than what was due at the time they were laid on; 22d December 1676, Dick *contra* Sir Andrew Dick, Dirleton, No 414. p. 202. *voce* PERSONAL and TRANSMISSIBLE.

It was answered for the arresters, That this annuity is no more due *de die in diem*, than the annualrents of bonds or annuities due to a liferenter. By the above judgment, it is not payable *de die in diem*, but at two terms in the year, Whitfunday and Martinmas, by equal portions; that is, at the same terms at which her jointure would have been payable in case of the Earl's death; and therefore this current term was affectable by arrestment, in the same way that a current half year's rent or jointure would be affectable.

The Lords preferred the arresters.

Reporter, Auchinleck. A.C. Bruce. Alt. Walk. Stewart.
Fol. Dic. v. 3. p. 43. Fac. Col. No 36. p. 71.
J. Monro.

Nature and Effect of Arrestment.

1623. December 20. HUME of Goodcroft *against* AIKMAN'S CREDITOR.

No 99.

IN an action of suspension, raised at the instance of Mr David Hume of Goodcroft, against James Aikman's Creditor, which creditor had arrested a sum of money owing by the said Mr David, to the said James Aikman, and was decerned to be made furthcoming for satisfying of a debt owing by the said James, to the said creditor:—THE LORDS found, albeit the bond containing the debt owing by Mr David, to the said James, was an heritable bond, and that he was thereby obliged to pay yearly annual ay and while the re-payment, yet that the said Mr David was not holden to pay annualrent, from the time that it was arrested in his hand, by the said James Aikman's creditor, seeing the arrestment was an probable cause to him, wherefore he could not be *in tuto*, if he had paid the same to his principal creditor, viz. Aikman; neither could he pay the same to the arrester, without a sentence, and so his retention of the sum being necessary to him for his own surety, excused him from annual paying, since the arrestment; and this was found, albeit it was *alleged*, That he ought either to have paid the

An arrestment of a sum contained in an heritable bond, supposed to have the effect of stopping the current of annualrent; so that the debtor could not be liable for it, either to the creditor or the assignee: not finally decided.