

1769. *March 10.* COUTTS and COMPANY *against* CALLIN.

DURING the dependance of a cause and cross-cause, Coutts and Company against John Callin, in the Chancery of the Isle of Man ; Callin came occasionally to Scotland, December 1767, whereupon Messrs Coutts applied to the Judge of the High Court of Admiralty, and obtained a warrant against him *judicio sisti*, which was executed against him at Ayr, on the 31st of that month, and thereupon he was imprisoned. Afterwards, Coutts and Company brought an action against Callin and Cautioner for payment of their debt. It was pleaded in defence, That the warrant was unnecessary, irregular, and illegal ; that there was no foundation for a jurisdiction over him *ratione originis, vel contractus, vel domicilii*, or by arrestment of his effects ; and that therefore the action fell to be dismissed. But the Lord Pitfour, Ordinary, found otherwise ; and, on bill and answers, the Lords adhered.

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1777. *January 29.* DOUGLAS, HERON, and COMPANY *against* PALMER.

IN deciding a competition of arrestments, betwixt Douglas, Heron, and Company and Charlton Palmer, arresters of the effects of Campbell of Kilberry, their common debtor, in the hands of the Sun Fire Office Company, at the market cross of Edinburgh, pier and shore of Leith, and in the hands of Robert Allan, merchant in Edinburgh, their agent at Edinburgh ; the Lords held it to be law, that an arrestment of effects in the hands of an Englishman, or other person having no forum here, was inept. See Dict. Vol. I. p. 330, *Coutts against Miln.* See 1 *New Coll.*, No. 133.

They found the same in the case of *Captain Wilson's Creditors*, 6th January 1758, as to an arrestment of a debt contracted in England, due by English officers to the common debtor. The officers were occasionally in Scotland. They thought they had no forum to authorise an arrestment. But they differed with respect to this Company, who had, in a manner, a house in Scotland, an office from which policies were given out and transfers made, where they received premiums, &c. and, in a word, traded like any Scotchman, But it was ANSWERED,—That all the policies were signed at London, though given out at Edinburgh. The receipts were signed at London, and only sent down to an agent here to collect the money for the convenience of the people of the country. But it remained clear, That if a pursuit was to be raised against the Company for any loss by fire, it behoved to be raised before the Courts of England. The Lords differed upon this ; Lord President and Lord Covington being clear of that opinion, Lord Monboddo being of the contrary. But they got out of this difficulty, as to this cause, by the Act of the Sun Fire Company themselves ; for Robert Allan, as their agent, and taking burden on him for them, having submitted the difference betwixt the Company and Kilberry, which conceived a loss by fire, to Mr Islay Campbell, he had pronounced decreet. In which the Company had acquiesced, and had raised a multiple-

pointing in which they had called the arresters to dispute their preference, in order that they might pay safely the sum decerned; which they said they were willing to do. (21st November 1776,) The Lords found the action competent, but found the arrestments incompetent, and brought the parties in *pari passu*.

The interlocutor was worded thus:—"Find that the arrestments used by both parties in the hands of the Sun Fire Office Company at London, by execution at the market-cross of Edinburgh, pier and shore of Leith, were improper and inept, in respect that the said Sun Fire Office Company have no forum here, and consequently are not subject to the Courts of this country; and thereby the debts due by them to the common debtor could not be attached by arrestments issued by authority of this Court: and find, that the other arrestments used by both parties, in the hands of Robert Allan, *qua* agent or factor in this country to the Sun Fire Office Company, were equally ineffectual to attach the effects of the common debtor in the hands of the said company; and therefore find the whole of these arrestments void and null; but, in respect the Sun Fire Office Company, by the process of multiplepointing at their instance, in which both the above named parties are called as defenders, have submitted themselves to the jurisdiction of this Court, and have thereby consented that decreet should pass against them for payment to the party who shall be found to have best right of whatever sum they owe to the common debtor; finds that this does not entitle either of the above named parties to a preference, the one to the other, in consequence of their several arrestments; but that they must draw *pari passu pro rata* of the sums to them severally due: and remit to the Ordinary to proceed accordingly."

On advising a reclaiming petition, with answers, (29th January 1777,) the Lords adhered to that part of their former interlocutor finding that the Sun Fire Office had no forum here, and that the arrestments in their hands, at market-cross, pier and shore, were inept; but having considered the submission and decreet-arbitral betwixt Robert Allan and Kilberry, they found the arrestments in the hands of Robert Allan were effectual arrestments; and, upon that principle, determined in the preference.

Robert Allan had entered into this submission, as agent, and taking burden on him for the company. The decerniture in the decreet-arbitral went against him in that character, and the company had acquiesced and homologated it, by raising the multiplepointing.

See ARRESTMENTS.

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