

No 113.
was preferred
to an execu-
tor-creditor,
who had ob-
tained de-
cree, but had
not proceed-
ed to poind.

Bell, who alleged, that an arrestment of moveables, being only a legal prohibition as an inhibition of immoveables, therefore, as the inhibition dies with the person inhibit, so must the arrestment with the debtor whose money is arrested.—*2do*, Though the arrestment could have effect after the debtor's death, yet it was a more regular and timeous diligence, to confirm the fums as in *bonis* of Riddell the debtor, and thereupon obtain decret against Bell: For, if Mr William had poinded, he would never repeat; seeing it is certain that arrestment hinders not poinding.—*3tio*, James Riddell can have no sentence till he call one representing John Riddell the debtor, who must be his executor, or his nearest of kin, whereas he has only called his heir, who represents him not *in mobilibus*.—It was *answered*, That there is no consequence from an inhibition to arrestment, because inhibition is against the debtor, prohibiting him to sell, but the arrestment is against the creditor, prohibiting him to pay; and, therefore, if Bell had died, the arrestment could not operate against his heir, because he was not inhibit; but the death of Riddell, the debtor, hinders not the effect of the arrestment; neither needs the executor be called, seeing Mr William is executor, who as executor compares.

THE LORDS found the arrestment effectual, albeit no process was raised thereon till after the death of the debtor, whose money was arrested, and preferred the arrester to the executor-creditor, though having obtained decret, seeing he did not poind thereupon. (See COMPETITION.)

Fol. Dic. v. 1. p. 58. Stair, v. 2. p. 839.

Breach of Arrestment.

No 114.
If corns are
arrested, and
the arrester
refuse to give
permission to
stack them on
the ground,
although cau-
tion to make
them furth-
coming be of-
fered; the
owner may
intromit at
pleasure,
without
breach of ar-
restment.

1518. July 6.

ABBOT OF PAISLAY *against* ADAM WALLACE.

GIF any man's cornis be arrestit at the instance of ane uther, and the maker thairof refusis to louse the said arrestitment, he beand requirit thairto be the awner of the saidis cornis; and cautioun beand offerit to him be the awner, to do thairfoir, that he aucht and fould do be the law: And zit gif the maker of the arrestitment beand desyrit be the awner, refusis to give licence to stack the cornis upon the ground, to be furthcumand as law will, the awner of the saidis cornis may justlie intromit thairwith and dispone thairupon, at his pleasour, and on na wayis thairthrow may be callit and convict for breking of arrestitment.

Balfour, (ARRESTMENT.) p. 538.