

null saine, and no saine, are much the same. And since the act of Parliament 1617, declares an unregistrate saine to make no faith in judgment; this is as strong as any certification in an improbation would be. To pretend that the saine is good against the arrestment, because it was valid when the arrestment was used, and might have been registrate at any time within a month after the arrestment, is but to cavil; for we are not to regard what might have been done, and was not done.

THE LORDS found the bond arrestable, and preferred the arrester.

*Forbes, p. 105.*

1707. *March 18.*

ALEXANDER ALISON, Writer, *against* the DIRECTORS of the African and India Company.

MR JAMES ERSKINE, Lord Grange, as probationer, reported Alexander Alison, writer, against the Directors of the African and India Company. Hary Crawford in Dundee having paid in L. 200 Sterling as an adventurer in that company, Alexander Alison, as creditor to him, arrests it in the directors, &c. their hands; and then pursues a furthcoming, and likewise repeats a declarator, that the money stands affected by his diligence, and must belong to him.—*Alleged, imo*, That the directors can never be personally liable, but only *ratione officii*. *2do*, By the act of Parliament establishing the company, (act 8th 1695,) the capital stock is declared free of all confiscations, seizures, arrests, &c. except only as to the profits; and the patentees are empowered to prescribe rules for conveying and transmitting the shares of the proprietors; and they having ordained it to be by real diligence, and transfers, it cannot be reached by arrestment.—*Answered*, So long as the company stood, the stock could not be affected; but now *res devenit in alium casum*, this present Parliament has declared the said company dissolved and at an end, upon paying in the stock out of the equivalent, which was a *casus incogitatus* at the time of erecting the company; and therefore, on a supposition that it would be perpetual, the stock was declared not attachable; but now when every proprietor is to draw out his share, what more habile and proper diligence than an arrestment, which is a *nexus realis*, and so answers the terms of the act of Parliament; and *esto* it were heritable, yet even such debts, by the 51st act, 1661, are affectable either by arrestment or adjudication, if infestment has not followed thereupon; and it were a most tedious and expensive way to put them to an adjudication; and lately, in the case of Alexander Stevenfon, merchant in Paris, a share in the Newmills cloth-manufactory was found moveable and arrestable; and by a declarator, the arrester was surrogate in place of the proprietor: And Dirleton, *voce* Arrestment of Conditional Debts, says, a creditor arresting a sum due upon a wadset before redemption, (when it is certainly not arrestable) if afterwards there be a redemption it accretes and is preferable to a second arrester after redemption, though this last seems more formal, being then

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A share of the African Company, which, while the company subsisted, was by act of Parliament not arrestable, found arrestable, the company being dissolved.

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made moveable; but *jus fuit fundatum*, and' the superveniency accretes. So Stair, Instit. lib. 3. tit. 1. § 29. observes out of Hope, that an arrestment of the price of lands only verbally sold, from which there was *locus penitentiae* (room to refile) was sustained, if a written agreement afterwards followed; and even so of arrestments *currente termino*.—THE LORDS found the company not personally liable, but that the arrestment affected the subject *tanquam nexus realis*; and though they could decern in the furthcoming, yet they decerned in the declarator, that the share due to Crawford fell to Alison, his creditor, who had arrested it, and that the directors ought to transfer it over to him; and when the commiffioners of the equivalent got the African money paid in to them, Alison had right to claim Crawford's share and proportion thereof.

Fol. Dic. v. 1. p. 55. Fount. v. 2. p. 361.

1712. June 11.

ROBERTSON against ROBERTSON.

No 44.

A tocher defined by contract, to the Lady in life-rent, and the heirs of the marriage in fee, found arrestable, as well principal as interest, during the marriage; but under burden of the life-rent, if it should exist.

DUNCAN ROBERTSON, brother to Strowan, having married Mr William Robertson of Inche's daughter, there is 6000 merks of tocher conditioned; but it is expressly destinate by the contract, to her in life-rent, and the heirs of the marriage in fee. Dean of Guild Robertson in Perth being creditor to Duncan, the husband, in L. 900 or thereby, he arrests the tocher in Robertson of Inche's hands, and refers the debt to his oath; who compears, and depones that he was debtor by the contract; but it was by an express clause affected with his daughter's life-rent; the husband was obliged to provide the like sum with the same destination; which he was so far from doing, that he had deserted his wife and children, and gone abroad to be a soldier: And that these sixteen months bygone, he had alimmented his daughter, and her bairns, and so was creditor in their alimment; and behoved to do so still, the husband having left no stock to subsist them, and no probability of his return. This oath coming to be advised, with the contract of marriage produced, several questions occurred; as, *imo*, Whether a creditor of the husband's could legally affect the sum by arrestment, in prejudice of the specific destination in favours of the wife; especially where the prestations on the husband's part were not implemented, nor offered by the arrester to be performed? For whom it was *contended*, That he was not concerned in these mutual prestations, but it was incumbent on Inches, the father, to have seen to their performance; and if he has neglected *sibi imputet*; neither do these clauses divest the husband of the fee, but he still retains the right and power of uplifting and disposal. Likeas it was an event very uncertain if the wife should ever come to her jointure by the husband's dying before her; and if that should not exist, then the creditor's arrestment was infallibly good. It was remembered by some of the LORDS, that, in a late case of the Earl of Bute's assignee to a tocher so qualified, it was found, that he had the *jus exigendi*, but upon caution to pay the annual-rent to the wife, in case she outlived her husband. The 2d doubt was, what this