in the eye of the law as a latent deed, a public infeftment, though posterior, is preferred to it, if not clad with possession.

The Lords found, That, in respect of the effects of arrestment in our law, it must be something more than a prohibitory diligence; that it gives a right upon which is founded the action of forthcoming, which, as it is an *actio rei persecutoria*, cannot die with the debtor, but is competent against his heir; therefore found, that, upon an arrestment in the predecessor's hands, not only a process of forthcoming depending could be transferred against the heir, but likewise that it could be raised anew. But, as, in this case, it was said that the arrestment was laid on in the hands of an apparent heir, some Lords had a doubt how far such an arrestment could affect the subjects which he became afterwards debtor in by serving heir to his predecessor; and it was remitted to the Ordinary to inquire about that fact. See the sequel of this affair, *November* 20, 1739.

CREDITORS of MENZIES of LETHEM *contra* WILLIAM LAW.

[Elchies, No. 10, *Arrestment*; Kilk., No. 3, *ibid.*]

The question here was, which of two arrestments was preferable, both laid on for a debt due by the Maiden Hospital of Edinburgh,—the one in the hands of the whole managers and directors, the other in the hands only of the treasurer.

Against this last, it was argued, 1*mo*, That an arrestment could only be laid on in the hands of the debtor; that only the corporation, or its representatives, were debtors; that the representatives of a corporation were the managers and directors, and not the treasurer, who is but their servant and can do nothing without their particular mandate. 2*do*, That this is further evident from the tenor of bonds granted by societies or corporations, where, for the most part, the directors are the parties contracting; and where the treasurer grants the bond, (which was the case here,) he does it by order from the corporation, and does not bind himself in the bond, but the managers and directors; and, as a proof of this, letters of horning cannot be directed against him but against the managers.

For the arrestment in the hands of the treasurer, it was said, that the treasurer, being the person who kept the cash of the company, made and received their payments, he was certainly the fittest person in whose hands they could arrest: that, in as far as concerned these matters, he might be said to represent the corporation. 2*do*, That it was not true that bonds were generally granted by the whole directors: that they were often only signed by the treasurer; and that though, in these cases, he acted by express commission from the managers, yet he was almost always personally bound himself; and though, in this case, the bond was not extant, yet that was to be presumed from the practice in like cases. 3*tio*, Though it cannot be denied that arrestments are

often laid on in the hands of the whole managers, yet it is an ordinary practice to arrest in the hands of the treasurer; so that, if this is not law, the lieges, who relied upon a practice which never before had been controverted, will be deceived.

The Lords found, That, in regard of the practice, and because the treasurer in some sense may be said to represent the corporation in these matters, therefore the arrestment in his hands was as good as the arrestment in the hands of the whole managers.

It was not here decided (nor was it necessary,) whether, when the arrestment was laid on in the hands of the managers, it behoved to be when they were assembled in council, or if it sufficed to lay it in every one of their hands singly; but the Lords seemed to be of opinion that the last was sufficient.

1739. *January* 15. ARCHIBALD STUART *against* ——— DENHAM.

[Elch., *Tailyie*, Nos. 9 and 13; Kilk., *ibid.* No. 1.]

This process was about incurring the irritancy of a tailyie. Denham had tailyied his estate with several irritant and resolutive clauses. Archibald Stuart, as next heir of tailyie, pursues his son, the defender, upon three different irritancies said to be incurred by him. The first was the omission of the irritant and resolutive clauses in the general retour. This point Mr Stuart gained before the Session, but lost in the House of Lords. The second was the simple contraction of debts, which was said to be doing a deed by which the estates may be evicted. This he lost before the Session. The third and last irritancy, upon which this present process was brought, was an adjudication led against the estate for the bygone annuities of the tailyier's widow. It was pled, for the pursuer, that this fell under the clause by which it was made a forfeiture of the estate to do any deed of commission or omission by which the estate might be adjudged;—that the not paying the Lady her annuities was a deed of omission, upon which the estate was actually adjudged.

It was ANSWERED, for the defender,—That the suffering an adjudication to be led for the lady's jointure did not fall under that clause, but under another, by which it was made an irritancy not to purge an adjudication led for the tailyier's debts within a certain time; that these bygone annuities were the tailyier's debt, not the heir's; and, by consequence, the mere suffering an adjudication to be led for them was no irritancy, providing it was redeemed within the time allowed by the tailyie, which yet was not expired.

By this means the whole question was brought to this single point, Whether these bygone annuities were the debt of the heir or of the tailyier?

The Lords found, first, That these annuities were the debt of the heir, and that the irritancy was incurred; but, upon a reclaiming petition, they altered their former interlocutor, and found the irritancy not incurred; and, upon advising the cause a third time, they adhered to their last interlocutor.