

No 60. can only be carried by adjudication, and which a creditor by arrestment cannot renounce.

THE LORDS ' preferred Alexander Macdonell to the funds *in medio*.'

A reclaiming petition was, by a great majority (13th January 1795) refused, without answeres. (*See HERITABLE and MOVEABLE.*)

Lord Ordinary, *Ankersville.* For Watson, *Hagart.* Alt. *Montgomery.* Clerk, *Sinclair.*
Douglas. *Fol. Dic. v. 3. p. 40.* *Fac. Col. No 139. p. 316.*

* * * When an heritable subject is vested in trustees, for payment of legacies, the interest of the legatees may be attached by arrestment; Douglas against Mason, 29th June 1796, *Fac. Col. No 226. p. 526. voce COMPETITION.*

See Hamilton against Drummond, p. 133.

In whose hands Arrestments may be used.

MUIRHEAD and M'MITCHELL *against* MILLER.

No 61.

An arrestment was not sustained, because used, not in the hands of him who was debtor to the common debtor, but in the hands of his factor.

IN an action pursued by William Muirhead and Thomas M'Mitchell, burghesses of Edinburgh, against William Miller, as assignee to Alexander Williamson, it was found, That a decret given against the said William Muirhead and Thomas M'Mitchell, their factors, in the town of Deik, at the instance of one Nicol Reid, who has obtained a sentence of 600 franks against Alexander Williamson, before the judges of London, and who by virtue of his sentence arrested in the said factors hands, the sum of 1100 franks, while they were appointed by the said William Muirhead and Thomas M'Mitchell, to deliver to the said Alexander Williamson, to be null and noways to defend the said merchants against the said assignee, because Alexander Williamson was not summoned to the giving of the decret, and because no arrestment could be made in the factors hands, of any sums of money addebted by the said Muirhead and M'Mitchell to Alexander Williamson, and whilk they were obliged to cause the said factors deliver to the said Alexander, in the town of Deik; because the factors were not debtors to Alexander Williamson, but the merchants themselves, in whose hands no arrestment was made.

Fol. Dic. v. 1. p. 57. Kerse, MS. (ARRESTMENT.) fol. 234.