

No 38.
found not
thereafter ar-
restable by
the appriſer's
creditors.

creditor of umquhil Sir William Dicks appriſes; but, before the appriſing, Lockhart, upon a debt due by Sir William Dick, arreſts all ſums in my Lord Bargany's hand, and purſues to make furthcoming. This Lord Bargany takes a right from the appriſer, for whom it was *alleged*, That he ought to be preferred to the arreſter, becauſe the arreſtment was, not *habilis modus*, in ſo far as Sir William Dick having appriſed for the ſum in queſtion, the appriſing is a judicial diſpoſition, in ſatiſfaction of the ſum; and ſo it could not be arreſted, unleſs it had been moveable by a requiſition or charge.—It was *answered*, That the act of Parliament, declaring arreſtment to be valid upon ſums, whereon infeſtment did not actually follow, made the arreſtment *habile*, and the appriſing can be in no better caſe, than an heritable bond diſpoſing an annualrent.—It was *answered*, That the act of Parliament was only in the caſe of bonds, whereupon no infeſtment followed, but cannot be extended beyond that caſe, either to a wadſet granted for the ſum, where the property is diſpoſed, where no infeſtment had followed; or to an appriſing, which is a judicial wadſet, *pignus pratorium*.—It was *answered*, That the reaſon of the law was alike in both caſes, to abridge the lieges unneceſſary expences by appriſing.

THE LORDS preferred the appriſer.

Fol. Dic. v. I. p. 55. Stair, v. I. p. 363.

1673. July 27.

THE CREDITORS OF ANDREW SCOT, Competing.

No 39.
The annual-
rents ariſing
from an he-
ritable bond
due to a wife,
were arreſted
for debts due
by the huſ-
band. The
arreſtment
found to
affect only
bygones and
the current
term, as be-
longing to
the huſband
jure mariti.
See No 49.
p. 713.

IN the Competition of the Creditors of Andrew Scot, anent an heritable ſum belonging to Andrew Scot's wife, which the creditors had arreſted in the hands of Bruce of Newton, and which the wife, with conſent of the huſband, had aſſigned thereafter to ſome of the creditors. It was *alleged* for the aſſignees, *imo*, That the arreſtment for the huſband's debt could operate nothing, but only for the annualrents preceding the arreſtment, and the current term for which it was laid on; for the ſum being heritable, did not belong to the huſband *jure mariti*, but only to the wife, except as to the annualrents, ſo long as it was in the wife's perſon; but now the wife, with conſent of the huſband, having aſſigned the ſame, the aſſignees have the only right.—It was *answered*, That the *jus mariti* by the marriage, is a legal aſſignation to the annualrents during the marriage, ſo that the huſband hath the only right to the annualrents during the marriage, and it is not in the wife's power to alter the ſame; and, as to his conſent, which is the only right as to the annualrents, it is null, as done in *fraudem creditorum*, the arreſter's having done diligence before the arreſtment, eſpecially ſeeing the huſband at that time was bankrupt and broken, ſo that the aſſignation as to the huſband being null, the creditors arreſtment, for all ſubſequent terms, would be ſufficient againſt the huſband.

THE LORDS found, That the annualrent belonged to the huſband *jure mariti*, during his wife's life and his together; and that the aſſignation made by him

would be valid to exclude the arresters from any thing after the current term, unless he were instructed bankrupt, or that the assignation was contrary to the act of Parliament 1621.

Fol. Dic. v. 1. p. 55. Stair, v. 2. p. 223.

1674. January 15.

BAILLIE *against* NASMITH and the TENANTS of LETHAM.

WILLIAM BAILLIE of Torwoodhead, having arrested in the hands of the Tenants of Letham, any sums due by them to the Lord Forrester, for payment of a sum due by Forrester to him, pursues now the tenants for making furthcoming. Compearance is made for young Poffo, donatar to his father's liferent, who hath right to the rents of Letham, as husband to the Lady Letham, the Lord Forrester's mother, and for him and the tenants. It was *alleged*, That the only sum due by the tenants of Letham to the Lord Forrester, was, by decret of Council produced, whereby the tenants were decerned with the Lady Letham and her husband, to repair the house of Letham, liferented by the Lady, betwixt and Lamma's thereafter; or otherwise, to pay to the Lord Forrester, as heritor thereof, 3200 merks, to be employed for reparation of the house; which sum being, by the decret, destined for that particular use of reparation, was not arrestable, for the Lord Forrester's debt, or applicable to any other use; especially seeing not only the Lord Forrester himself was interested, but the Lady liferenter, and her husband, who had the benefit of the house when repaired; so that the tenants thought that they were in security to pay the sum to Forrester, even after the arrestment, and had paid a great part of it.

THE LORDS found, That this sum being decerned and destined for the particular use of reparation, which did not only concern the Lord Forrester, but others, that it was not arrestable for Forrester's debt.

Fol. Dic. v. 1. p. 56. Stair, v. 2. p. 253.

1705. June 26.

STEWART of Torrence *against* WALTER STEWART of Pardovan.

THE LORDS decided the competition betwixt Stewart of Torrence, and Walter Stewart of Pardovan, creditors to Cornwall of Bonhard. Pardovan raises an adjudication of an heritable bond for L. 10,600 Scots granted by Bonhard to George Dundas, and executes the same. Three days after this citation, Torrence arrests the said debt, but Pardovan obtains his decret of adjudication before Torrence gets his decret of furthcoming.—*Alleged* for Torrence, He ought to be preferred, because the term of payment of the sum arrested not being come at the time he laid it on, it was moveable, and consequently arrestable, and not the subject of

No 39.

No 40.

Tenants were decreed to pay a sum to the heritor, to be employed in repairing a house liferented by a third party. Not arrestable, being destined for a certain purpose, in which a third party was concerned.

No 41.

Competition between an adjudication and an arrestment of an heritable bond.