

1750. February 27. WATSON of Muirhouse against CROOKS & DOUGLAS.

By the contract of marriage between James Douglas and Mary Cleland, it was provided, "That the sum of 1000 merks due by Watson of Muirhouse, which was assigned to the said Mary by Margaret Hamilton Lady Cleland, her mother, should not fall under the *jus mariti*, either as to principal or interest."

Crooks, a creditor of Douglas, the husband, having arrested in the hands of Muirhouse the debtor, Mr Watson presented a bill of suspension of the bond on double distress from the arrestment and a horning at the instance of Mary Cleland, the wife, and her husband; which the Ordinary, before whom it came, "Refused," in respect of the said clause in her contract of marriage, excluding the husband's *jus mariti*, and consequently his creditors.

But, upon a petition from Mr Watson, the LORDS "remitted to the Ordinary to pass the bill."

For though it might be true, that the husband's creditor could have no interest in the subject arrested, yet it is also true, that the arrester may have a reply, and the debtor is not obliged to undertake the litigation with the arrester.

Fol. Dic. v. 4. p. 11. Kilkerran, (ARRESTMENT.) No 19. p. 46.

No 6.
Arrestment entitles to pursue a multiplepoinding, however untenible the arrester's claim may *ex facie* appear.

1772. February 13. MARY WHITE against JOHN BROWN.

WHITE preferred a complaint against Brown, for that he had proceeded to execute horning and caption upon a decree of forthcoming recovered against her as debtor to Harris, notwithstanding his being called in a multiplepoinding at her instance, along with other creditors of Harris, and wherein Brown had entered compearance; and set forth, that in order to avoid imprisonment, she had been obliged to consign the money.

Brown *pleaded* in his justification, the captious conduct of his adversary, That the charge of horning was given with a view to make her suspend, and bring on the decision of the question, which she did not: That the executing of the caption was delayed; and that the money hath since been restored to the complainer by the respondent's order.

"THE LORDS found this procedure irregular; but modified both damages and expenses to L. 3."

Act. B. W. McLeod.

Alt. Hay Campbell.

Clerk, Kirkpatrick.

Fol. Dic. v. 4. p. 11. Fac. Col. No 6. p. 10.

No 7.
Diligence used by a party compearing in a multiplepoinding, against the raiser of it, irregular.

See APPENDIX.