

No 75.

I have some scruples. There is such a thing as an imperfect right to a personal debt, as well as to land. A disposition to land without investment, is only one step to a transmission of property. An assignation of a bond without intimation, is in like manner but one step to the transmission of a *jus crediti*: The cedent is not divested before intimation. The debt may be arrested by his creditor, and therefore not by the creditor of the assignee. After intimation, the debt is only arrestable by the creditor of the assignee. Applying this to the present case, it appears to me that Lord Cranston's right to the rents, by virtue of his heritable bond, even before the sale, was incomplete, and required a decret of mails and duties to complete the transmission; and therefore, before such decret is obtained, an arrestment in the tenant's hands, by Lord Cranston's creditor, would not be effectual. It would be the same with an arrestment laid in the debtor's hands, by the creditor of an assignee before intimation. But the price being a *surrogation* in place of the land, an arrestment laid in the hands of the purchaser can never have a better effect, than an arrestment laid in the hands of a tenant before the sale. *2do*, The transaction betwixt the creditors and purchaser, is in effect a mutual contract, which requires mutual performances. The purchaser is indeed debtor for the price; but then he is not bound to pay to any single creditor, till he obtain from that creditor a conveyance of his debt and diligence. For this reason, the price cannot be affected by an arrestment. It becomes not a pure debt, till this conveyance be made, and the arrester cannot convey. A general disposition *mortis causa*, carries all the defunct's moveable bonds. But confirmation being necessary to complete the transmission, an arrestment before confirmation, is an inhabile diligence. The debtor, in whose hands the arrestment is laid, is not bound to make the sum furthcoming to the arrester, till the debt is confirmed, which cannot be done by the arrester. In this view, it alters not the case, that the purchaser granted bond to pay the price to the apparent heir and to the creditors. For still this obligation is under an implied proviso, that the creditors must convey their debts and diligences to the purchaser; for he is not bound to pay without purging incumbrances.

The only proper method to attach the bygone interest due upon an investment of annualrent, is to adjudge the heritable bond, which will entitle the adjudger to take a decret of mails and duties against the tenants before the sale, and to convey the debt and diligence to the purchaser after the sale.

Sel. Dec. No 57. p. 75.

1756. January 23.

PATRICK SOUPER against The CREDITORS of ALEXANDER SMITH.

No 76.

A person insolvent, at a meeting of creditors, by a missive, empowered a

ALEXANDER SMITH being insolvent, did, at a meeting of his creditors, write the following letter, directed to John Watson: 'I hereby empower you to cause roup and sell the furniture of my house, and liquors in my cellars, for the behoof of my creditors.'

In consequence of this letter, Watfon roused part of the goods.

Souper, a creditor of Smith's, who had not been present at the meeting, arrested in the hands of Watfon. This brought on a competition betwixt him and the other creditors.

Pleaded for the creditors, Watfon was trustee for them; he was accountable to them, and not to Smith. There was a *jus quæsitum* to them by Smith's letter; therefore an arrestment in the hands of their trustee was inept.

Answered for Souper, The mandate flowed from Smith; it was revocable by him; it would have fallen by his death: and therefore the arrestment in the hands of the *mandatarius* was an apt diligence.

THE LORDS found, That the goods sold, and the prices thereof received by Watfon, belonged proportionally to the creditors, according to their debts.

A&G. *Hamilton-Gordon.*

Alt. *J. Craigie.*

Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. p. 42. Fac. Col. No 178. p. 266.

J. Dalrymple.

1759. February 9.

ANDREW STALKER, Merchant in Glasgow, against ANDREW AITON,
Merchant there.

In February 1754, John Trotter having carried to Jamaica a cargo of goods, insured them in Stalker's office. The price of insurance amounted to L. 57: 12s. Sterling, for which he granted bills on London. The bills were protested for not acceptance.

In July thereafter, Trotter sent a cargo of sugars from Jamaica to Leith, consigned to Aiton at Glasgow, and to Mitchell at Leith. He inclosed the invoices and bills of lading in a letter to Aiton; and desired him, 'when he received the proceeds of the cargo, to discharge certain bills and accounts due by him in Scotland, as far as the proceeds would go.' And to the letter he subjoined a list of the creditors to whom these bills and accounts were due, in which Mr Stalker is set down as one. Mr Aiton was likewise desired to insure the cargo; which he did in his own name.

Before the arrival of the sugars, Mr Stalker, in October 1754, arrested them in the hands of Aiton, as the effects of Trotter, his debtor.

After the arrival of the sugars at Leith, Mr Aiton, in February 1755, made out an account of the proceeds of the cargo, and allotted to each of the creditors a certain share thereof, corresponding to their debts; by which the whole was exhausted, and there remained due to the creditors considerable sums.

All the creditors agreed to accept of this dividend except Stalker; and Aiton granted an obligation to the other creditors to pay them their shares of it.

No 76.

person to sell his goods for behoof of his creditors.

The proceeds not arrestable by an individual creditor who was not present at the meeting.

No 77.

Arrestment in the hands of a person to whom goods are consigned being used before the goods come to his possession, not competent.

Goods put into the hands of a trustee, to be sold and applied for behoof of creditors, being sold; arrestment in the trustee's hands, cannot prevent him from making the intended division of the price.