

Neither the second decision apply to the present case. For though bills or goods consigned to the behoof of the common debtor may be subjected to the arrestment of his creditors, yet, when they are consigned for payment of certain creditors, the property is so much transferred to those creditors, that the goods are not liable to diligence by arrestment at the instance of other creditors. This was so determined in a case, December 1726, Jamieson *contra* Leckie, No 46. p. 711.

THE LORD KAMES ORDINARY found, That, in October 1754, the date of the pursuer's first arrestment, Andrew Aiton had no such possession of the goods as to make the arrestment in his hands a habile diligence for affecting the same: And with respect to the second arrestment, laid on in Mr Aiton's hands after he became bound to the creditors to divide the proceeds of the cargo amongst them, found, That Mr Aiton was not interpellated, by the said arrestment, from making payment to the creditors in pursuance of his obligation. And the LORDS, on advising a reclaiming petition and answers, adhered to the interlocutor of the Lord Ordinary.

*Fol. Dic. v. 3. p. 41. Fac. Col. No 166. p. 295.*

1760. November 18.

DAVID CUNINGHAM, Baker in Edinburgh, *against* George Home, Deacon, and Charles Cuningham, Boxmaster of the INCORPORATION of BAKERS there, David Simson, agent, James Frazer and James Dougal, and others, servants to the Members of the Incorporation, in the management of their mills.

THE bakers of Edinburgh were formerly thirled to the mills belonging to that city, for all wheat grinded by them; but finding that servitude inconvenient, they, for payment of an agreed feu-duty, got an irredeemable right to these mills, in favour of their then deacon and boxmaster, and their successors in office, for the use and behoof of the incorporation of bakers, and their successors.

By the regulations established for the management of these mills, it appeared, that the benefit of the feu was intended solely for the utility of the respective members, and not to have any connection with the incorporation funds; and that that benefit was communicated to the widows of such members as carried on trade after their husband's death.

A widow of one of the members of the corporation, having brought some wheat to the mill to be grinded, David Cuningham, her creditor, arrested it, while it was grinding, in the hands of the deacon and boxmaster, clerk, and other servants of the corporation; and afterwards insisted against them in an action of furthcoming.

The deacon and boxmaster *pleaded*, That, as managers of the corporation-funds, they could not be found liable; because the corporation neither had interest in nor possession of these mills. The feu was not granted to the corporation

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Arrestment of grain belonging to one of the members of a corporation, used against the managers and servants of that corporation, the grain being in their hands for the purpose of being grinded, found not competent.

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as an *universitas*, but to the particular members, who were the proprietors, and as such were both in the civil and natural possession of the mills. Nor could the feu's being taken in the name of the corporation subject the managers in this action; for it was only a name used for the behoof of the particular members. They had no concern in the management of the mills, further than as individuals of the corporation; consequently, in the present question, they fall to be considered only in that capacity.

In the *next* place, With regard to the arrestment used in the hands of the servants, it was certainly inept: For it was an established point, That an arrestment could not be used in the hands of the servant of a debtor, for the purpose of obliging that servant to make the goods forthcoming; as the servant's possession is understood to be the master's possession; and there can be no arrestment in the hands of the debtor himself. By the regulations for the management of these mills, the servants are the proper servants of the individual member whose grain for the time is under their care. They take their directions from, and are paid by him; and therefore, in every respect, are to be looked on as his servants.

*Lastly*, The arrestment in the clerk's hands can be of no avail. For he is not custodier of the grain; his sole business is to keep an account of the grain grinded for the respective members, so as to ascertain how much each is severally bound to pay.

*Answered* for the arrester: He is well-founded in his action of forthcoming against the deacon and boxmaster; because they, as the legal representatives of the corporation, are undoubtedly the proprietors and possessors of the mill: The feu-right is taken in their names; and arrestment in their hands is held in law as arrestment in the hands of the corporation. If any person, not a member of the corporation, had been allowed to grind wheat at these mills for his own use, and his creditor had inclined to arrest it, he would have exactly taken the same method, and it would have been effectual; and so it ought to be in the present case; for it can make no difference, that the proprietor of the wheat was in so far considered as a member of the corporation to whom the mills belong, as to have the privilege of grinding there; as the wheat was allowed to be her separate property; and it is undoubted law, That if a member of a copartnery lodges goods, which are his own property, in the hands of the copartnery, these may be arrested in the company's hands, although he is himself a member of that company.

The arrestment in the hands of the servants was also an effectual arrestment; because, both in common sense and law, a servant has such a possession as the law requires to found an arrestment: Which doctrine is confirmed by a decision in the Dictionary, *voce* ARRESTMENT, where an arrestment laid on in the hands of a wife, acting for her husband, was found effectual to oblige her to make good what was in her hands at the time of the arrestment; Fountainhall, 18th July 1706, Home *contra* Pringle, No 64. p. 734.

*Eastly*, Supposing arrestment in the hands of a servant were incompetent, the millers, in the present case, cannot, with any propriety, be considered as the servants of each particular member, during his turn, although, to avoid confusion, they are paid a certain quantity out of each parcel grinded; for they are hired by the corporation annually; the care of the mill is committed to them by the deacon and box-master, in name of the corporation; and, upon any emergency, they are entitled to give orders to the servants of the mill, not to grind for any particular member, preferable to the orders of the member whose turn it is to grind.

THE LORDS found the arrestment not competent.

*Act. Johnstone.*

*Alt. Montgomery.*

*Fol. Dic. v. 3. p. 42. Fac. Col. No. 148. p. 452.*

1760. December 10.

Competition of APPINE'S CREDITORS.

DOUGAL STEWART of Appine, perceiving his affairs to be in disorder, left Scotland in April 1756, in order to be out of the reach of his creditors; and, before his departure, he put the keys of his house in Edinburgh, together with an inventory of his plate, household-furniture and books, into the hands of a friend, Thomas Frazer, writer in Edinburgh; who, at the same time was creditor to him in a bond for L. 131 Sterling, bearing date the 3d April 1756.

Thomas Frazer soon after removed the plate, and a part of the furniture from Appine's house, and lodged them in a ware-room belonging to Francis Brodie, wright in Edinburgh. Brodie gave his receipt, obliging himself to restore the goods to Frazer; and Frazer, on the other hand, promised to pay him the cellar-rent; and paid it accordingly.

Upon the 26th of May thereafter, Alexander Stewart of Edinglassie, one of Appine's creditors, used arrestment in the hands of Francis Brodie; and in June following, John Campbell of Barcaldine, another of the creditors, laid on an arrestment in Frazer's hands; who raised a process of multiplepoinding, containing a conclusion to have it found, That the goods were pledged in his hands in security of a debt owing him by Appine; or at least, that he had a right of retention of these goods, until he should operate his payment. And in evidence of the impignoration, he produced a letter from Appine, of date 31st July 1756, in these terms: 'Dear Thomas, I am surpris'd that any body should give you any trouble concerning my furniture, especially as the same was left in your hands in further security of a debt I owe you above its value.'

*Pleaded* for Thomas Frazer: The intention of the common debtor, in putting the goods into his possession, was, that they might remain with him as a pledge in security of the debt which he owed him. And although this was not expressed by any written document, at the time of putting the goods into his hands, the

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A creditor intrusted with the key of his debtor's house, and an inventory of his furniture, &c. found not to have any right, either of impignoration or retention in these effects.

A competition took place between an arrestment in the hands of such depository, and an arrestment in the hands of another, to whom he had transferred the natural possession of the furniture. Both found competent, and preferred according to date.