

1776, November 21, and 1777, January 29. MESSRS. DOUGLAS, HERON and Co.
against CHARLETON PALMER.

FORUM COMPETENS.

[*Supp. V.* 449.]

COVINGTON. I understand the letters to have authorised arrestment in general; and arrestment at the market-cross is a known form. But I doubt how far such arrestments are good against persons who are not within the jurisdiction of the Court. So found in the case of *Couts*,—*Dict.* vol. I, p. 330. Thus, an arrestment in the hands of a person without the jurisdiction of the Sheriff, will have no effect in an action before the Sheriff. The multiplepointing brought by the Sun Fire Office may remove the objection as to want of jurisdiction, but it will not have the effect of making the one arrestment preferable to the other.

MONBODDO. If a person has not a *forum*, his goods cannot be arrested; but I observe that the Sun Fire Office has an agent in Scotland, receives payment of premiums there, and probably has debts due there. The question is, Whether such a society, though established in England, may not, by having an office here, be amenable to our jurisdiction? I think they are, and so they understood it, by bringing the multiplepointing.

ALVA. When there is a company matter carried on in Scotland, I think that a jurisdiction lies in Scotland.

KAIMES. An arrestment is merely the command of a private person, when the arrestee has no *forum*. The only question is, Whether has the Sun Fire Office a *forum*? The having goods in a country will not, *eo ipso*, subject a man to the jurisdiction of that country. This is the case of every foreign merchant: the only way to establish the jurisdiction would have been, by an arrestment *jurisdictionis fundandæ causa*.

PRESIDENT. If the arrestment is competent, the warrant may be sustained. But the Sun Fire Office has no *forum* in Scotland: the *premiums* are discharged at London. A power of uplifting debts, given to Allan, their agent, will not make arrestments in his hands effectual, as if he were a debtor himself. If this is so, the arrestments at pier and shore are good for nothing. The multiplepointing may remove the objection as to jurisdiction, but it will not have the consequence of preferring one arrestment to the other.

GARDENSTON. By an arrestment *jurisdictionis fundandæ causa*, the subject comes to have a *situs*: this form, however, was omitted here. But, as the Sun Fire Office brought the money into Court, we may divide it.

On the 21st November 1776, "The Lords found the arrestments void and null; but, in respect of the multiplepointing brought by the Sun Fire Office, they found that the sum in question is brought within the jurisdiction of the Court; and, therefore, that the arresters are to be preferred *pari passu*, ac-

ording to their interests, and remitted to the Ordinary to proceed accordingly;" altering Lord Auchinleck's interlocutor.

Act. A. Wight. Alt. A. Murray.

1777. January 29. KAIMES. I am of the opinion of the former interlocutor: all the arrestments are good for nothing.

COVINGTON. Neither of the parties had a right to what the Court gave them. The company, even by bringing the multiplepounding, did not subject itself to our jurisdiction: an objection against jurisdiction is still entire. I think that the company had a *forum* wherever it set up an office. The subject in dispute is money decreed to be paid here for a loss sustained in this country. I do not think that the decret against Allan can make any variation. This is like the late case of *Mr Robert M'Intosh*, where he was found to be only liable that his brother should take burden. Allen took burden: and the Company has agreed to be bound. I think that the two arrestments are equivalent. In the one, Allan is designed factor, but that does not imply that the arrestment is laid in his hands merely *qua* factor; it applies to him as debtor *quocunque nomine*. In the other, the arrester, being better acquainted with the factor, used more accurate words.

KAIMES. The debt is the debt of the Company, not of Allan: if they bring a multiplepounding they must pay.

GARDENSTON. The Sun Fire Office has a *forum* wherever it has a *taberna*. This is not the case of a merchant who has accidental dealings in a foreign country.

HAILES. Were this *forum* sustained the consequences would be very extensive indeed. At Leith there is a Dutch and a Danish consul, and such consuls are agents for many foreign merchants: will that circumstance bring the Dutch and the Danes under our jurisdiction? As to the arrestments in the hands of Allan, I do not see how they can carry any thing, for the multiplepounding mentions Allan in the single character of factor for the Company; and the forthcoming concludes against him as factor and manager, not as debtor *proprio nomine*.

BRAXFIELD. If this office did not exist in Scotland, the Sun Fire Company would have no *forum* here. Let us see whether the having such an office in Scotland can make any difference. For the ease of people contracting, they have an agent in Scotland, but he cannot so much as sign a policy or settle a loss: this is not sufficient to create a *forum*. I do not think that a jurisdiction, *ratione contractus*, is good, unless the person of the debtor can be apprehended. If so, it would be still stronger to create a jurisdiction where the contract is actually entered into in a foreign country. I also doubt as to the arrestments used in the hands of Allan: he takes burden for the Company; but he is not debtor. Even supposing he meant to be debtor, still the manner of making the debt effectual is a different thing. Although Allan could be attached, still the debt is the debt of the Company, and he is no more than cautioner; and arrestment in the hands of a cautioner would not be good.

JUSTICE-CLERK. We all know that this Company is an English Company. The partners may carry on their business all over Europe, but their only domicile is at London. Allan neither is, nor, by the charter, can he be authorised

to grant policies or to adjust losses. It is quite a different thing when a man has a tavern or a shop in a foreign country, for there the *institor* binds his constituent. I am equally clear that Allan, being decreed to pay a specific sum of money, is a proper subject in whose hands arrestment may be lodged and forthcoming pursued. The two executions, however different in form, are tantamount as to their effect.

On the 29th January 1777, "The Lords found that the arestments in the hands of Allan are effectual;" varying their interlocutor of ———.

Act. A. Wight. *Alt.* Solicitor Murray.

Diss. Kennet, Stonefield, Hailes, Braxfield.

The Lords repelled the whole other objections, and remitted to the Ordinary.

1777. February 7. TRUSTEES OF FRANCIS, LORD NAPIER, *against* MRS MARGARET DRUMMOND.

WARRANTICE.

The Purchaser of an Estate is entitled, on Eviction, to recover the Value as it stood at the date of Eviction; and he is entitled to be reimbursed for Meliorations before he quits Possession.

[*Supp. V.* 636.]

COVINGTON. I thought it a point as well established as any in the law of Scotland, that the damage must be estimated as at the time of eviction. In the case quoted by Lord Stair, the point in question related to a sum of money; but the lawyers on both sides admitted the rule as to lands. No purchaser would ever improve an estate, if the value at the time of the sale were to be considered as the rule at the time of eviction. There is an error which runs through the whole of the argument for the defenders: this case is supposed to be the same with *that* where the parties are not at one as to the thing sold: that is not the case here. The progress was very bad, and the purchaser was stumbled at it, and therefore he took care to have a clause of warrantice uncommonly anxious and large. An estate is low rented; I purchase it with the view of getting an advanced rent, and I possess for thirty years. After I have formed this plan, and run all risks, am I when the subject is evicted to get nothing but my original price?

JUSTICE-CLERK. The doctrine of the defender, however plausible, would go far to overturn every thing that we have learned of law, in the case of eviction. I am also for the pursuers on the second point. Lord Napier did rashly in quitting possession, and so did Mr Drummond in not opposing it; but the defence is not sufficient. The doctrine of the civil law was very strict. The Roman lawyers thought that the right of retaining the estate was sufficient to secure; yet still justice says, that, although by any accident, a man should lose possession, still the value must be restored. I cannot see why action should be denied, even supposing me, by error or inattention, to have quitted that hold which the law gave me.