

1728.  


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 YORK  
 BUILDINGS  
 COMPANY  
 v.  
 MERES.

The GOVERNOR and COMPANY of  
 UNDERTAKERS, for Raising the  
 Thames Water in York Buildings, } *Appellants*;  
 SIR JOHN MERES, Knight, *Respondent*.

24th May, 1728.

ARRESTMENT.—Arrestment of rents, for security of a sum not payable for four years after the date of the arrestment, ordered to be loosed without caution or consignation, although the debtor was *vergens ad inopiam*.

[Fol. Dict. I. p. 59. Rem. Dec. II. p. 205. No. 106. Mor. Dict. p. 800.]

No. 4. SIR JOHN MERES, holding receipts or obligations of the York Building Company to the amount of L.7878, whereby they bound themselves to grant bonds for that sum, payable on the 12th April, August, 1727. 1732, raised an action for the purpose of compelling them to grant such bonds, and for payment of them as they became due with interest; also to pay the bygone interest due upon the receipts.

Pending the action, Sir John used inhibition against the Company; and he likewise arrested their whole rents and effects in Scotland in security of the sums sued for. Against these arrestments the Company presented a petition, praying “that  
 “the arrestments, in so far as concerns the principal sums, whereof the payment was delayed to  
 “a distant day, might be loosed without caution  
 “or consignation,” upon advising which with an-  
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swers, the Lords “ found that the aforesaid arrestments laid on, are effectual both for the principal sums and annual rents libelled, and therefore refused the desire of the petition.”

The appeal was brought from that part of the above interlocutor which finds the arrestments effectual for the principal sums.

*Pleaded for the Appellants* :—A distant day was agreed for payment of the principal sums, and it was contrary to the meaning and intention of the paction to lay on arrestments for the principal sums till such time as they became due, whereby the rents in the poor tenants’ hands must inevitably perish.

By the law of Scotland, arrestment of rents of lands or the other profits of any estate cannot regularly be used, but after the term of payment of the sum ; and it is unjust to lock up a debtor’s effects when the creditor cannot take them.

The respondent is sufficiently secured for the capital debt, having used an inhibition, which bars the appellants from selling their estate, or contracting debt thereon to the prejudice of the respondent’s debt. By these arrestments all the rents of the appellants’ estates are stopped, by which they are disabled from paying yearly their annuitants with whom they contracted under several acts of parliament.

*Pleaded for the Respondent* :—The arrestment prevents the tenants from paying rent only until security be given, and is loosed upon such security ; so that it is far from an entire bar to the ap-

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pellants receiving their rents in all events until the money should become payable. If no arrestment could be used until the term of payment, it might be very inconvenient and even fatal to the creditor, since the debtor might in the mean time dispose of every thing that might be the subject of payment.

Although the circumstances of the debtor at the time of agreement may be such as not to give any occasion to require security for payment at a day to come, yet if by accident or otherwise the circumstances alter, it can never be presumed to have been the intention of the creditor to tie up his own hands from procuring the best security he can, by pursuing the methods which the law has provided in such cases; otherwise it might be in the power of the debtor to dispose of or encumber his estate, and thereby deprive the creditor of all remedy, or other creditors might affect and carry off the estate while he was obliged to be silent. This view is strengthened by the fact, that the appellants have actually stopped payment to all their other bond creditors; and, subsequent to the receipts granted to the respondent, they have been sued by other creditors who are carrying on diligence against the estate. Even since the present arrestments were laid on, they have themselves given to their annuitants an universal infeftment over their whole estate, for above L.10,000 per annum; on account of which, although the arrestments were loosed, they could have no access to receive the rents.

Judgment  
May 24, 1728.

After hearing counsel, "it is ordered and ad-

“ judged, &c. that so much of the said interlocu-  
 “ tor complained of in the said appeal, as finds the  
 “ arrestments laid on effectual for the principal  
 “ sums, be reversed; and it is hereby further or-  
 “ dered, that the said Lords of Session do order  
 “ the arrestments, in so far as concerns the princi-  
 “ pal sums, whereof payment is delayed to a dis-  
 “ tant day, to be loosed without caution or con-  
 “ signation.”

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For Appellants, *Dun. Forbes, C. Talbot, Alex.  
 Garden.*

For Respondents, *P. Yorke, Ch. Areskine,  
 Will. Hamilton.*

This reversal is not noticed in any of the reports. The judg-  
 ment of the Court of Session is founded on by Erskine, b. iii. t. 6.  
 § 10.