

fyng of a debt owing to him by the said Andrew Galbraith, and upon the arrestment, having obtained sentence before the Sheriff of Strivling, against Blair-shogel, as holden as confessed: Which decret being suspended upon this reason, that the sum was owing by contract of marriage foresaid, and was destined to be employed upon land, as is before related; in respect of which destination, the sum was heritable, and so not subject to arrestment: And also he alleged, That seeing he had conditioned these sums in favours of his daughter, for her lifetime and her husband's, and to their heirs, with provision in case of failzie of heirs betwixt them, that *eo casu* the equal half thereof should return to his son, in respect he was obliged to pay these sums only with these provisions; and, in that manner, therefore, with no reason can he be compelled to pay the same to any use, otherwise than to that use whereto he had provided and obliged himself particularly, and so ought not to be paid or made furthcoming, for satisfying the debt owing by his son-in-law to his creditor, contrary to the mind of the contract, and provisions of the parties: And the creditor compearing and opposing his decret recovered against him, and alleging this sum to be arrestable:—THE LORDS, notwithstanding of the destination foresaid, contained in the contract of marriage, found the sum was arrestable; but declared that the creditor, who had obtained sentence therefor, to make the same furthcoming, ought to fulfil the conditions with which the money was affected by the said contract of marriage; and that the money ought to be paid to him, he finding caution to make the same furthcoming to the relict, in case she survive her husband; and to the heirs gotten betwixt them, in manner as the contract proports: And found, That he ought not to have the said sum paid to him, except upon finding caution, as said is; and found it not competent in this place to dispute, if the sum might be evicted for the husband's debt, and thereby the bairns (if any were gotten in the marriage) prejudged of the fee of the money, or the person substitute, if there were no heirs in the marriage; but reserved that in its own time to be considered, when the case should fall out; and, in the mean time, the husband living, who was provided to this liferent, at least of the money, it was found that the creditor, during his lifetime, ought to have the use of the money, he finding caution *ut supra*; for the arrester's debt being far less than the sum arrested, the profit thereof might pay him before his debtor died, and so the doubt anent the heirs could not occur. (See FIAR ABSOLUTE and LIMITED. See MUTUAL CONTRACT.)

Clerk, Gibson.

*Fol. Dic. v. I. p. 55. Durie, p. 846.*

1666. February 22.

LOCKHART against LORD BARGANY.

THE umquhil Lord Bargany, being addebted in a sum of money to Sir William Dick, he apprised, but no infestment nor charge followed. Thereafter a

No 38.

A party having led an apprising, the sum was

No 38.  
found not  
thereafter ar-  
restable by  
the appriſer's  
creditors.

creditor of umquhil Sir William Dicks appriſes; but, before the appriſing, Lockhart, upon a debt due by Sir William Dick, arreſts all ſums in my Lord Bargany's hand, and purſues to make furthcoming. This Lord Bargany takes a right from the appriſer, for whom it was *alleged*, That he ought to be preferred to the arreſter, becauſe the arreſtment was, not *habilis modus*, in ſo far as Sir William Dick having appriſed for the ſum in queſtion, the appriſing is a judicial diſpoſition, in ſatiſfaction of the ſum; and ſo it could not be arreſted, unleſs it had been moveable by a requiſition or charge.—It was *answered*, That the act of Parliament, declaring arreſtment to be valid upon ſums, whereon infeſtment did not actually follow, made the arreſtment *habile*, and the appriſing can be in no better caſe, than an heritable bond diſponing an annualrent.—It was *answered*, That the act of Parliament was only in the caſe of bonds, whereupon no infeſtment followed, but cannot be extended beyond that caſe, either to a wadſet granted for the ſum, where the property is diſponed, where no infeſtment had followed; or to an appriſing, which is a judicial wadſet, *pignus pratorium*.—It was *answered*, That the reaſon of the law was alike in both caſes, to abridge the lieges unneceſſary expences by appriſing.

THE LORDS preferred the appriſer.

*Fol. Dic. v. I. p. 55. Stair, v. I. p. 363.*

1673. July 27.

THE CREDITORS OF ANDREW SCOT, Competing.

No 39.  
The annual-  
rents ariſing  
from an he-  
ritable bond  
due to a wife,  
were arreſted  
for debts due  
by the huſ-  
band. The  
arreſtment  
found to  
affect only  
bygones and  
the current  
term, as be-  
longing to  
the huſband  
*jure mariti*.  
See No 49.  
p. 713.

IN the Competition of the Creditors of Andrew Scot, anent an heritable ſum belonging to Andrew Scot's wife, which the creditors had arreſted in the hands of Bruce of Newton, and which the wife, with conſent of the huſband, had aſſigned thereafter to ſome of the creditors. It was *alleged* for the aſſignees, *imo*, That the arreſtment for the huſband's debt could operate nothing, but only for the annualrents preceding the arreſtment, and the current term for which it was laid on; for the ſum being heritable, did not belong to the huſband *jure mariti*, but only to the wife, except as to the annualrents, ſo long as it was in the wife's perſon; but now the wife, with conſent of the huſband, having aſſigned the ſame, the aſſignees have the only right.—It was *answered*, That the *jus mariti* by the marriage, is a legal aſſignation to the annualrents during the marriage, ſo that the huſband hath the only right to the annualrents during the marriage, and it is not in the wife's power to alter the ſame; and, as to his conſent, which is the only right as to the annualrents, it is null, as done in *fraudem creditorum*, the arreſter's having done diligence before the arreſtment, eſpecially ſeeing the huſband at that time was bankrupt and broken, ſo that the aſſignation as to the huſband being null, the creditors arreſtment, for all ſubſequent terms, would be ſufficient againſt the huſband.

THE LORDS found, That the annualrent belonged to the huſband *jure mariti*, during his wife's life and his together; and that the aſſignation made by him