

1731. *January 31.* CREDITORS OF PATRICK BAR *against* HIS RELICT.

No 53.

In a competition amongst arresters, an arrestment founded upon an annuity, and bearing to be for payment of by-gones, and for security in time coming, was found preferable according to its date, not only for all the terms' aliments due when the arrestment was laid on, but also for those that were due at the time of the competition. It was *argued* against this, That an arrestment upon an obligation, having *tractum futuri temporis*, can have no further effect than for what was actually due when it was laid on. It was on the other hand *pleaded*, That this rule suffers an exception, in case of the debtor's insolvency, which was the case here; and there arrestments in security are as allowable as adjudications in security. N. B. The annuity here was run out before the competition, so that in effect there is nothing in this decision but what is comprehended in the general rule about the preference of arrestments laid down in Watkins, No 170. p. 820., unless it be that when the debtor is *vergens ad inopiam*, arrestment may be not only founded upon a debt before the term of payment, *ubi dies cessit*, but also for security of future annuities *ubi dies nec cessit, nec venit*. But it came not to be determined, whether the arrestment in security could screen the subject from posterior arresters, not only for payment of by-gones for which there was *parata executio* at the time of the competition, but also for security in time coming of the annuities as they should fall due, which indeed is the important question. See APPENDIX.

*Fol. Dic. v. I. p. 539.*

1733. *July.* WALLACE *against* CREDITORS OF ROBERTSON.

No 54.

A CREDITOR having obtained a decret of constitution, with an additional sum in name of expenses, an arrestment laid on by him during the dependence, was not found entitled to draw in the forthcoming any part of the expense laid out after the date of the arrestment; for an arrestment cannot be effectual to secure a debt that is not existing at the date thereof; and the expense of process, laid out after the date of the arrestment, could not be a debt at the time of the arrestment; and even then, as they were only due *officio judicis*, they became only a debt from the date of the modification. See APPENDIX.

*Fol. Dic. v. I. p. 539.*