

No 71.

1740. January 15. GORDON against INNES.

ARRESTMENT in the hands of a trustee will carry the sum in a bill indorsed in trust, for behoof of the common debtor. See No 51. p. 715.

1742. June 22.

Competition ROBERT CARMICHAEL, with ANNA MOSMAN, relict of William Hardie.

No 72.

Is an arrestment good in the hands of an assignee before he receive payment, for the superplus over paying himself? Arrestment in the hands of the treasurer of a bank is a competent mode,

THE deceased William Hardie being creditor by bill to M'Kenzie of Rosend in the sum of L. 44 Sterling, he conveyed the same to George Mosman and John Paton, for relief of certain engagements they had come under for him. And being relieved, they, with Hardie's consent, assigned the debt to the Bank of Scotland, to whom Hardie had become debtor in the sum of L. 30: 5s. Sterling. Mr Carmichael, a creditor of Hardie's in the sum of L. 20 Sterling, used arrestment in the hands of Mr David Drummond treasurer of the Bank, upon the first of April 1732. In February 1736, Hardie died, and in August thereafter, Carmichael brought an action of furthcoming against the Governor and Company of the said Bank. The Bank received payment of Rosend's debt on the 8th June 1739, with the interest due thereon, and on the 17th July thereafter, Mrs Hardie confirmed, as executor-creditor to her husband, the superplus money in the Bank's hands, after paying their own debt; and objected to Carmichael's arrestment, that it could not be carried into execution by a process brought after the death of the principal debtor. *2do*, That the arrestment in the hands of the Bank was inept; for that, at the time of the arrestment, it was not debtor to Mr Hardie. It is true, that it became debtor thereafter in a liquid sum; but as the arrestment did not affect *acquirenda*, this after-debt could not be affected by the prior arrestment. Suppose the Bank had by the assignation been bound, betwixt and a day certain, to do diligence upon the debt assigned, or to denude; yet such an obligation could not be arrested, nor be made the subject of a furthcoming, because it was not commensurable with a liquid sum of money.

*Answered*: That Rosend's debt was conveyed to the Governor and Company of the Bank, and to Drummond their treasurer, for their use and behoof; so that Hardie was fully denuded; and though Drummond might be accountable to him for the contents of this bill, after the payment of the debt due by Hardie to the Bank, yet the right was fully established in Drummond. The question therefore must be considered in the same light, as if Drummond had given his obligation to Hardie, to account and pay over to him so much of Rosend's debt as he should recover, more than would satisfy what was due by Hardie to the Bank; which obligation, however uncertain *quoad* the extent, or as depending upon an uncertain condition, must have constituted a *jus crediti* in favours of Hardie, which his creditors might affect; and as no other method is known in law, whereby the