

Upon what Debts Arrestment may be Founded.

No 18.

Arrestment found competent, as well as poinding, upon a bond, heritable by an obligation to pay annualrent; though such bonds were not at this time held to be arrestable.

1628. *March 7.*

WILSON *against* L. DRUMLANRIG.

JAMES WILSON writer, against L. Drumlanrig, pursues to make arrested goods furthcoming, for satisfying of a debt owing to the pursuer by Archibald Douglas, brother to the Lord Torchorwald, for payment whereof certain sums owing by the said L. Drumlanrig to the said Archibald, were arrested by the said pursuer, the bond being conceived in form of an heritable obligation, made by the said Archibald to the said Wilson, pursuer, obliging him to pay annualrent for the sum while the re-payment. Upon this bond the pursuer's arrestment being raised and executed, and it being controverted, and *alleged* by the defender, That the pursuer's debt being by an heritable bond, no arrestment thereupon could be sustained, seeing arrestments could not be executed, but for moveable sums: This allegiance was repelled, and the arrestment allowed, albeit raised upon an heritable bond; for, as the party might have poinded therefor, so he might arrest; but if the bond had contained that requisition should have preceded before the debtor should pay the sum, *hoc casu* the LORDS inclined that no arrestment should be execute therefor, until the time that the sum had been made moveable by a preceding requisition; but it is thought, that heritable sums owing by heritable bonds, may not be arrested, although arrestments may be raised upon heritable bonds by the creditor, to whom these heritable sums are owing.

Clerk, *Scot.*

Fol. Dic. v. 1. p. 54. Durie, p. 355.

* * * Spottiswood mentions the same case thus :

JAMES WILSON pursued the Lord Drumlanrig for making of some money furthcoming, which he had arrested in his hands.—*Alleged*, The arrestment could not be sustained, because it was upon an heritable bond, which could not be arrested before it was made moveable.—THE LORDS repelled the allegiance, because, as he might have poinded upon his bond, so he might arrest; the bond containing no clause of requisition, nor any infestment following thereupon, but being only conceived after an heritable form. Indeed, an heritable bond cannot be arrested *passive*; but he in whose favours an heritable bond is given, may arrest *active* upon it.

Spottiswood, (ARRESTMENT.) p. 17.