

ARRESTMENT.

695

followed, is as liable a ground for a decret of forthcoming as any other liquid debt.

No 23.

The LORDS preferred the first arrester.

For Brodie, *Pat. Grant.* — *Att. Jo. Sinclair.* Clerk, *Dalrymple.*
Fol. Dic. v. 3. p. 39. Edgar; p. 54.

1743. December 14.

LORD HOLYROODHOUSE and SIR ROBERT STEWART of Tillicultry, competing.

SIR ROBERT STEWART, as creditor to Alexander Pitcairn, having arrested upon a bond of relief, conceived in the following terms: 'That the said Pitcairn should relieve, harmless and ~~harmless~~ keep, the said Sir Robert, from all payment of the sum; and, for that effect, he and his forefairs should be bound and obliged, either to pay the said principal sum to the creditor against Whitsunday 1738, and retire from him the said bond, &c. or otherwise to pay the said sum to Sir Robert against the said term, with a penalty in case of failzie, to the effect Sir Robert might pay the sum and relieve himself thereof.' And Lord Holyroodhouse having, as a creditor to Pitcairn, thereafter arrested upon a bond of borrowed money, Sir Robert was preferred upon his prior arrestment, in respect of the clause in the bond of relief, obliging the debtor to pay to Sir Robert the cautioner, at a term certain, Sir Robert finding caution to apply the money in terms of the bond of relief.

No 24.
Arrestment found competent upon a bond of relief.

Fol. Dic. v. 3. p. 39. Kilkerran, (ARRESTMENT.) No 12. p. 42.

What Subjects Arrestable.

1502. March 9. ROBERT FRANCIS N. against EARL of MONTGOMERIE.

CORNIS growand upon ony man's landis may on nowayis be arrestit on the ground for ony annuelrent auchtand furth of the famin landis be ony man.

Balfour, (ARRESTMENT.) p. 537.

No 25.
Corns growing could not be arrested for annualrent due out of other lands than those on which they grew.

1615. December 4. MOWATT against CREDITORS of RICHARDSON.

In an action of quadruple pointing, pursued by Alexander Mowatt against the creditors of John Richardson, the LORDS found, that could not make arrestment, because the time of making thereof his bond was heritable, and fasine was given to him of an annualrent for his sum. And albeit, there was a provision of the bond that it should be lawful to charge for the principal without registra-

No 26.
Arrestment found incompetent, while a bond remained heritable, before a charge was given.

No 26. tion ; yet before that charge, the sum remained heritable, and so they preferred one George Smith to him.

Kerse, MS. (ARRESTMENT.) fol. 234.

1619. December 17. NAPIER *against* COUPAR.

No 27. THE LORDS found no action, to make arrested goods furthcoming, at the instance of Andrew Napier, because the day of payment of his principal bond was not come.

Kerse, MS. ARRESTMENT.) fol. 235.

1619. December 17 EARL OF MELROSE *against* TENANTS.

No 28. THE contrary found in favours of the pursuer against the debtor, whose day was not come, suspending the execution while the term should be past.

Kerse, MS. (ARRESTMENT.) fol. 235.

1620. July 14.

ANDREW COUPAR *against* AIKMAN, Cautioner for Sir William Irving, and Andrew Tod.

No 29.
A bond, heritable by destination, not arrestable after the term of payment.

THE LORDS found an bond, made by Sir William Irving to James Arnot, of 5000 merks, to be paid at Whitfunday 1619, then to be employed upon land or annualrent to James and the heirs male of his body ; whom failzieing, to Alexander Arnot his brother's son, and his heirs heritably, to the which use the same is definite by the tenour of the said bond, to be heritable after Whitfunday 1619, which was the term of payment, and therefore could not be arrestable by Andrew Coupar in September 1619.

Kerse, (De Heredibus.) MS. fol. 140.

1624. July 16. FORBES of Monymusk *against* GAIRDEN of Banchry.

No 30.
A sum, secured by infestment, was payable at four terms. The debtor was personally bound. The first moiety was arrested in the

GAIRDEN of Banchry sells his lands to Forbes of Monymusk for the sum of 20,000 merks ; for the surety of payment of the which sum, he transacts with Monymusk, and takes him obliged to give him an infestment of property of some lands, which, by that same contract, bearing that security, Banchry sets back again, for payment of the proportion of the annualrent of the principal sum, which principal sum is, by that contract, appointed to be paid at four several years expressed in the contract, viz. A fourth part at ilk Whitfunday, the first