

No 132.

Signation of the principal sum and annualrent, and caution for the penalty.

THE LORDS refused to loose the arrestment, being upon a decret, upon caution; but granted the same upon consignation of the principal sum and annualrent contained in the bond, which was the ground of the arrestment, and caution for the penalty.

*Fol. Dic. v. 1. p. 59. Stair, v. 2. p. 333.*

1675. June 30.

HALL against MURRAY.

No 133.

The decret being turned into a libel, arrestment is loofeable upon caution.

ARRESTMENT being upon a decret; and the said decret being thereafter turned in a libel, the LORDS found, That the decret ceased to be a sentence; and the arrestment thereupon is now of the nature of an arrestment upon a dependence, and may be loofed.

Clerk; Gibion.

*Fol. Dic. v. 1. p. 59. Dirleton, No 284. p. 138.*

Stair likewise mentions this case :

JAMES MURRAY having charged John Hall, and arrested his goods upon a decret, he suspends, whereupon the decret was turned to a libel, and thereupon the suspender craved that the arrestment might now be declared null, at least might be loofed.

THE LORDS ordained the arrestment to be loofed.

*Stair, v. 2. p. 338.*

1675. November 4.

MOSSMAN, Supplicant.

No 134.

Arrestment in security before the term of payment of the arresting debt is loofeable upon caution.

WIGHTMAN in Edinburgh gives bond to his wife, obliging him to pay to her, her heirs and executors, 4000 merks, in satisfaction of her third, and provision of their conquest, and the contract, payable at the first term after his own death; the wife having died before the husband, her nearest of kin, — Mossman, confirms herself executrix to the defunct's wife, and gives up in inventory this bond of 4000 merks, and thereupon obtains decret against Aikman the husband, and upon the decret arrests several sums of his, whereupon Aikman gives in a bill for loofing the arrestment; but, in respect that ordinarily arrestments upon decreets cannot be loofed; the matter was considered by the LORDS, and they remembered that lately they had loofed arrestment upon consignation of the sum, for which the arrestment was laid on.

And they found, That, in this case, the term of payment neither being come, nor near, being after the debtor's death, who is yet alive, that there was no reason his whole means should lie under arrestment all his life; they did therefore loose the arrestment upon sufficient caution, at the sight of the Lords.

*Fol. Dic. v. 1. p. 59. Stair, v. 2. p. 363.*

Gosford reports the same case thus :

THIS day there was a query proposed to the LORDS, upon a bill given in for loosing of an arrestment upon caution, bearing, that Mofsman having given a bond to his wife for payment of the sum of 4000 merks, at the first term after his decease, her executors confirmed, having given up this bond in the inventory of debts, and thereupon obtained a decret against Mofsman, upon which they had arrested the whole debts due to him; and his whole moveables, which he craved to be loosed upon sufficient caution. The reason of the query was, That the arrestment, being upon decret, could not be loosed upon caution by our law and practise, but only upon consignation.—THE LORDS having considered the case, did loose the arrestment upon sufficient caution, upon this reason, that our law and practise, refusing to loose arrestments upon decreets, and offer to find caution, was only where decreets were given, which were to have present execution, or at a certain time. But this decret having been given upon a bond, which could not take effect till after the death of the granter, which was uncertain, it was against reason and law to deprive him of making use of his debts for commerce or livelihood, or to consign the whole debt decerned, which would be useless until his death, and that it was sufficient that he should find caution, that the said debt should be punctually paid, conform to his bond, at the first term after his death, which did absolutely secure his wife's executors, *et ratio legis* being only to secure by arrestment, could not be farther extended than for debts which were presently due, and at a certain term.

Gosford, MS. No 799.

1675. November 6. GEORGE MONTEITH, Supplicant.

GEORGE MONTEITH having given in a bill, representing, that he having arrested certain sums of money, did supplicate the LORDS, that no loosing thereof should pass, but upon sufficient caution intimate to him; and that, notwithstanding, the clerk of the bills, after intimation of the LORDS deliverance, granting his bill, thereafter accepted a cautioner living in Leith, who is a known bankrupt. It was answered, That the supplicant had obliged himself, during such a space, not to arrest, and that the sum was so great a cautioner could hardly be found.

THE LORDS considering the loosing of arrestment had passed of course, contrary to their order, found it void, and ordained the same to be intimate to the debtors, in whose hands arrestments was made; and ordained the servant of the bill-chamber, who hath the charge of the loosing of arrestments, to be removed out of the chamber.

Stair, v. 2. p. 364.

No 134.

No 135.

The clerk of the bills expelled from his office, for taking improper caution in loosing arrestment; and the loosing, which had passed, contrary to an order of Court, found null.