

No 136.

1675. November 20.

WARDEN *against* BERRY.

THE LORDS found, That an arrestment upon a decret, after it was suspended, may be loosed upon caution. Done upon a bill. See No 131. p. 793.

Clerk, *Hamilton.**Fol. Dic. v. 1. p. 59. Dirleton, No 300. p. 147.*

* * * Gosford observes the same case thus :

THERE being a new query made to the Lords, by the Ordinary upon the bills : If an arrestment upon a decret, which was suspended, could be loosed, upon caution ? It was *debated*, That, by our law and custom, no arrestment upon a decree could be loosed ; but, on the contrary, it was *urged*, That the decret being suspended upon caution, ought not to have that same force as a standing decret, which was never suspended ; seeing the suspension did not only suspend all execution, but make the subject of the decret to be again called in question ; and the creditor being sufficiently secured by caution, it was *against* reason, that, by an arrestment, which was a real diligence, he should be incapacitated to make use of his goods or debts, and so have nothing to live upon. — The Lords did find, that the arrestment ought to be loosed upon sufficient caution, our law and custom being only, where decreets were standing unsuspended ; but the reasons thereof could not be extended where decreets were suspended ; but yet they were all of opinion, that inhibitions might be truly served upon decret standing suspended.

Gosford, MS. No 807.

No 137.

After decree has followed on a dependence, arrestment is still looseable upon caution.

1677. June 9.

SIBBALD of Rankillor *against* SIBBALD.

SIR DAVID SIBBALD having disposed his estate to Henry Sibbald, his son, with reservation of an annuity to himself, did raise a process for payment, and arrested the tenants duties upon the dependence, and thereupon having obtained decret for payment, he insists now for making the rents furthercoming. — The tenants *alleged*, That the arrestment was loosed upon caution, whereupon they paid. — It was *answered*, That the loosing of the arrestment contains an express provision, *unless the arrestment proceeded upon a decret* ; and albeit this arrestment was on a dependence, yet there having supervened a decret upon that dependence, before the loosing of the arrestment, it was equivalent as if the arrestment had been upon the decret.

THE LORDS found, That an arrestment, upon a dependence, might be loosed upon caution, albeit a decret on that dependence preceded the loosing of the arrestment.

Fol. Dic. v. 1. p. 59. Stair, v. 2. p. 521.