

No 145. in allowing diligences to go out against a debtor, that regard is had to his present circumstances. An inhibition offered against a man of an opulent fortune, for a small debt, is often stopped as an effect of malice; and if Sir John Meres, or any other of the creditors to the Company, had proceeded to arrestment, when their credit was entire, and no other creditor doing diligence, it is not improbable the judges might have interposed; but as it is believed, the parties themselves will not take upon them to affirm that such is their case, there appears to be neither law nor equity for the demand made in the petition.

'THE LORDS refused the desire of the petition.' (See LEGAL DILIGENCE.)

*Fol. Dic. v. 1. p. 59. Rem. Dec. v. 2. No 106. p. 205.*

No 146. 1739. July 4. HERIOT against FORBES.

WHERE an arrestment is laid on, upon a depending action for a great sum libelled at random, the event of which process, and extent of the true claim, is uncertain, the LORDS, *ex arbitrio*, modify a sum, upon finding caution for which, they find the arrestment loofeable; and did so in this case.

*Fol. Dic. v. 3. p. 44. Kilkerran, (ARRESTMENT.) No 5. p. 37.*

No 147. 1741. July 22. MARGARET WHITE, Petitioner.

SUSPENSION having been obtained of a decret-arbitral, after arrestments had been used thereupon, and the suspender applying for letters of loofing the arrestments, the LORDS were of opinion, that wherever a decret is suspended, arrestments on it are loofeable, though laid on before the suspension; and therefore granted warrant for letters of loofing, but upon new caution.

*Fol. Dic. v. 3. p. 44. Kilkerran, (ARRESTMENT.) No 9. p. 40.*

No 148. 1753. June 16. ELIZABETH BANNERMAN, Supplicant.

Arrestment found effectually loofed on caution, though the letters of loofing were not intimated to the arrester. See No 144. p. 798.

BANNERMAN having arrested certain sums in the hands of James Salmon, due by him to her debtor, obtained decret of furthcoming. Salmon, in a suspension, *pleaded*, That he had lawfully paid the debt, for that the arrestment in his hands had been loofed upon caution.

*Answered*: Intimation of loofing the arrestment had not been made to the arrester; therefore the payment unwarranted: For that, *imo*, The will of letters of loofing arrestments uniformly is, that the executor thereof intimate the loofing of the arrestment to the arrester, and deliver to him a copy, containing the day of loofing of the arrestment, witnesses present thereat, and cautioner found therein; otherwise that the arrestment stand and remain unloofed.