

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.

*2do*, This seems to be agreeable to reason, because the cautioner, though good at the time of finding caution, may become insolvent, before the arrester knows that the arrestment was loosed, or who is cautioner, so as to have an opportunity to prosecute him.

No 148.

*Replied for Salmon the arrestee*: Such intimation is not required by the act 1617. Ja. VI. parl. 22. cap. 17. The danger pretended is imaginary, seeing that act of Parliament provides all caution to be found to the clerk of the bills, who is liable for the sufficiency of the cautioner. Further, the will of letters of arrestment is only to secure the subject till caution be found. Of this the arrester may be certiorated at the Bill-chamber, which is a place of record, patent to all the lieges. Before the act 1617, when caution was found to a messenger only, intimation was necessary; and though now no longer so, yet the style of the letters continues the same. This point was decided in a case observed by Forbes, 18th July 1707, Grichton against Borthwick, No 144. p. 798.

THE LORD ORDINARY sustained the reason of suspension; and a reclaiming petition being offered,

\* THE LORDS refused the same, and adhered.

For Bannerman, *David Grene*.  
*Wal. Stewart.* *Fac. Col. No 83. p. 124.*

1760. July 22. JOHN MACARTHUR against DAVID BRUCE.

JOHN MACARTHUR, as executor nominated by Ludovick Grant, brought a process, in his own name, and in that of Elisabeth Leslie, a creditor of the said Ludovick Grant, in a bond of L. 150, against Barbara and Grizel Grants, his sisters; *alleging*, That, upon their brother's death, they had clandestinely intromitted with and carried off sundry moveable effects belonging to him; and therefore concluding against them, as vicious intromitters, to restore the said effects, or to make payment of L. 150 Sterling as the value of the goods.

In this process compareance was only made for Barbara; and she having acknowledged her intromission with certain particulars of furniture, and other effects, of which a condescence was given in to process, but the values of which were not ascertained, she was decerned, by decret of the Court of Session, to return the said goods to the pursuer.—It was further *alleged*, That about the time of her brother's death, she intromitted with L. 22 Sterling of cash, which was then lying by him. To this she made no answer, but withdrew her compareance; upon which she was also decerned to make payment to the pursuer of the said L. 22. Mrs. Grizel, the other sister, was decerned in absence, as a vicious intromitter with her brother's effects, to restore the money, goods, gear, and effects, intromitted with by her; or otherwise to make payment to the pursuer of L. 150 Sterling, with interest and penalty, in terms of the libel.

No 149.  
 Arrestment of goods contained in lockfast trunks and packages, being loosed, upon caution, and the goods afterwards given up by the arrestee to the common debtor, without any inventory or appreciation, the cautioner, in the loosing, found liable to the arrester to the extent of the debt upon which the arrestment was used.