

1773. December 15. UNIVERSITY OF GLASGOW *against* ARCHIBALD HAMILTON
of Rosehall.

ARRESTMENT.

[*Faculty Collection, VI. 252; Dictionary, 682.*]

JUSTICE-CLERK. In a suspension there is a cautioner : none here. But whose fault is that? The University has desired to have the suspension discussed on the bill, by which there is no caution found. The dependance arising from a suspension is of a different nature from that arising from a dependance on an action. When the Court passes suspension, it is aye and while the cause be discussed. This in so far detracts from the credit of the demand made.

MONBODDO. In this case I, as Ordinary, have turned the decret, or charge, into a libel : it is therefore a summons called, or depending action, and so arrestment is competent to force caution. Independent of this, it is said that no example can be produced of such arrestment. Hard to prove a negative : there may be many examples, of which we know nothing.

[It is difficult indeed to prove a negative, but the University may make an affirmative, by producing examples. Charles Inglis, the clerk of the bills, *rei attentus* as any man living knows none such.]

COALSTON. Here a charge given, suspended, decret turned into a libel; hence a dependance, whereon arrestment may proceed.

KAIMES. A suspension is no more than a suspension of personal diligence. If I may adjudge during a suspension, why may I not arrest? The one is in moveable what the other is in heritable subjects. In exercising this extensive right, there might be a hardship. But whenever any thing emulous appears, the Court will give relief from equity.

AUCHINLECK. I think that *here* there is a proper dependance. The cause is now in the shape of an ordinary action.

On the 16th December 1773, the Lords found arrestment competent in the circumstances of this case.

Act. R. Cullen. *Alt.* D. Dalrymple.
Reporter, Pitfour.

N.B. The Court was so much divided as to the grounds of the judgment, that, on the very next day, (17th December,) application was made to me, as Ordinary on the Bills, to grant letters of arrestment in a case precisely similar ; with this difference,—that the charge (or decret as it is called in practice) was not turned into a libel. My opinion went with that of Lords Coalston and Auchinleck, and I thought myself at liberty to refuse signing such warrant, in respect of the general terms of the interlocutor, (16th December.)