

No 26. tion ; yet before that charge, the sum remained heritable, and so they preferred one George Smith to him.

Kerse, MS. (ARRESTMENT.) fol. 234.

1619. December 17. NAPIER *against* COUPAR.

No 27. THE LORDS found no action, to make arrested goods furthcoming, at the instance of Andrew Napier, because the day of payment of his principal bond was not come.

Kerse, MS. ARRESTMENT.) fol. 235.

1619. December 17 EARL OF MELROSE *against* TENANTS.

No 28. THE contrary found in favours of the pursuer against the debtor, whose day was not come, suspending the execution while the term should be past.

Kerse, MS. (ARRESTMENT.) fol. 235.

1620. July 14.

ANDREW COUPAR *against* AIKMAN, Cautioner for Sir William Irving, and Andrew Tod.

No 29.
A bond, heritable by destination, not arrestable after the term of payment.

THE LORDS found an bond, made by Sir William Irving to James Arnot, of 5000 merks, to be paid at Whitfunday 1619, then to be employed upon land or annualrent to James and the heirs male of his body ; whom failzieing, to Alexander Arnot his brother's son, and his heirs heritably, to the which use the same is definite by the tenour of the said bond, to be heritable after Whitfunday 1619, which was the term of payment, and therefore could not be arrestable by Andrew Coupar in September 1619.

Kerse, (De Heredibus.) MS. fol. 140.

1624. July 16. FORBES of Monymusk *against* GAIRDEN of Banchry.

No 30.
A sum, secured by infestment, was payable at four terms. The debtor was personally bound. The first moiety was arrested in the

GAIRDEN of Banchry sells his lands to Forbes of Monymusk for the sum of 20,000 merks ; for the surety of payment of the which sum, he transacts with Monymusk, and takes him obliged to give him an infestment of property of some lands, which, by that same contract, bearing that security, Banchry sets back again, for payment of the proportion of the annualrent of the principal sum, which principal sum is, by that contract, appointed to be paid at four several years expressed in the contract, viz. A fourth part at ilk Whitfunday, the first

four years after the contract ; so that, by the contract, Banchry, after ilk term, if he pleased, might charge for the fourth part, notwithstanding of the condition of this infestment, which infestment is ordained by the contract to stand effectual for the remanent of the said principal sum, whereof the terms of payment are not come, and also but prejudice of the same infestment, for the annualrent of the sum, whereof the term is past ; so, in like manner, Monymusk, by that same contract, may pay the sum, at ilk one of the said terms, proportionally, but any requisition to be made by him to Banchry, to receive the same : This being the tenor of the contract, Banchry, after the expiring of the first term, charges for payment of the first fourth part, and for the penalty conditioned for not payment thereof ; which charges being suspended, upon a reason, that the said sum was arrested by Banchry's creditors, the LORDS found the reason no ways relevant ; for albeit that the sum was arrested by the creditors, after the term appointed for the payment thereof by the contract, and also that Monymusk, who was debtor, might have paid it at the term, without any requisition, to Banchry the creditor ; whereby it would appear, that the sum was moveable, when the term was past, and so might be arrested ; nevertheless, the LORDS found, seeing that the debtor had not offered nor consigned the money as he might have done, if he had pleased to use the liberty of the contract ; which not being done, the same remained in the nature of an heritable sum, and so not subject to arrestment, before the charge was execute at the creditor's instance for payment thereof ; after the which charge the sum became moveable, and no arrestment was made after the charge, albeit the same was made after the term of payment ; for the LORDS found, that the nature of the security tended to an heritable destination of the sum, albeit the debtor might have paid the same at the term, as said is, without any preceding requisition, either on the part of the debtor, to his creditors to receive the money, or on the part of the debtor, to provide and pay the same ; seeing that was not done. And consequently found, that this sum, before the said charge, or before the consignment or payment by the debtor, was neither subject to arrestment, nor would fall under Banchry's escheat, nor his testament, if he had died, or been put to the horn, before the term of payment, or before a charge or consignment.

No 30.
debtor's hands, after the term of payment, but before the debtor was charged to make payment. The sum was found not arrestable.

Act. Hope & Lermonth.

Act. Nicolson & Craig.

Clerk, Gibson.

Fol. Dic. v. 1. p. 55. Durie, p. 139.

1626. March 15.

JOHN GRAY against WILLIAM GRAHAM.

FOUND that arrestment may be made upon a bond bearing the common clause, after infestment, to pay without requisition, both for the principal sum, and for the annualrents after the charge, continually to the term of payment.

Kerse, MS. (ARRESTMENT.) fol. 235.

No 31.
After the charge arrestment is competent on an heritable bond.