

1665. February 7. GRAHAM *against* BRUCE.

No 129.
Found, that
loofing arrest-
ment did not
liberate the
debtor, in
whose hands
the fum was
arrested,
while it re-
mained un-
uplifted by
the loofer.

IN an action pursued at the instance of David Graham taylor, against George Bruce and Doctor Martine, to make arrested money furthcoming; it was found, That the loofing of the arrestment did not liberate the debtor in whose hands the samen is arrested, in regard it was still resting by him, un-uplifted by the loofer.

Fol. Dic. v. 1. p. 59. Gilmour, No 125. p. 91.

Stair reports the case thus.

DAVID GRAHAM, upon the fight of a bond unregistrate, of George Bruce's, obtained arrestment; and therewith arrested a fum in Doctor Martine's hand, which was loofed, and after the loofing, assignation was made by George Bruce to his sifter.

In which case, the LORDS found, That the arrestment being upon the bond, before registration, might be loofed; and, notwithstanding of the loofing, seeing it was not now paid by the debtor, they ordained it to be made furthcoming to the arrefter, and preferred him to the assignee; albeit, it was *alleged*, That the tenor of the arrestment was but till caution was found; which being found, albeit the debtor could not oppose to make it furthcoming, yet an assignee, after loofing the arrestment, may let.

THE LORDS considered, that the caution found, in loofing arrestments, is overlie and insufficient; and so would not infecure creditors, doing diligence by arrestment. (*See* LEGAL DILIGENCE.)

Stair, v. 1. p. 265.

1673. December 19.

MR PATRICK HOLME, Advocate, *against* GEORGE HOLME.

No 130.
Arrestment
upon a de-
pendence
may be loof-
ed upon cau-
tion.

THE Laird of Aytoun being debtor to the late Justice-Clerk, and being charged to make payment, did suspend upon consignation; after which Mr Patrick getting an assignation from his father, and obtaining a consent from Aytoun, did crave, by a bill, that the clerks might be ordained to give him up the configned money. Against which George Holme having compeared, did *allege*, That he, being creditor to the Justice-Clerk, did arrest the said fum in the Laird of Aytoun's hand before the consignation: Which arrestment, being a real diligence, did so affect the money, that Aytoun's consent was not sufficient to take away the benefit of the arrestment. It was *answered* for Mr Patrick, That the Laird of Aytoun who did consign the money, as he might have paid the same, notwithstanding of the arrestment, and taken his hazard to have been made liable to the arrefter in the action to make furthcoming, so it was in his power to pass from the config-

nation as being satisfied, in that which did make him suspend on consignation.—
 THE LORDS finding, That George Holme had arrested only upon a dependence; and that the debt was not constituted by any sentence; and that, before the same could be constituted against the Justice-Clerk's heirs, the consigned money would lie useless, and the event of the process might be uncertain: They did ordain the consigned money to be given up to Mr Patrick, he finding sufficient caution to refund the same, with the annualrent, after his receipt, as soon as George Holme should constitute his debt against the Justice-Clerk's heir; but, if the debt had been liquidate by a bond or decret, they thought Aytoun's consent was not sufficient to give up the consigned money in prejudice of the arrestment, which was a real diligence.

Fol. Dic. v. 1. p. 59. Gosford, MS. p. 382.

1675. June 11. SEOT against MURRAY.

A suspension being raised of a decret; arrestment was used at the instance of the creditor, after the raising of the same; and, upon that pretence, it was craved by the suspender, That the same might be loosed; and, upon the report of the bill, the LORDS having debated, Whether the said arrestment could be loosed, being upon a decret, though suspended?

THE LORDS found, That though a suspension be raised of a decret, yet it does not cease to be a decret, until it be taken away by a decret in favours of the suspender; and that, though a suspension sits execution, yet the creditor may arrest, seeing the arrestment is no execution, but a diligence and remedy to preserve the debtor's estate, to the effect that, after discussing of the suspension, the creditor may have execution against the same: And, therefore, they found the arrestment could not be loosed. In this case, the suspender had consigned the principal sum, but not the annualrents; otherways, if he had consigned all, the LORDS would have loosed the arrestment; seeing the consignation of the money is sufficient surety to the creditor.

Clerk, Hay.

Fol. Dic. v. 1. p. 59. Dirleton, No 263. p. 127.

1675. June 18. JAMES HAMILTON, Supplicant.

JAMES HAMILTON, merchant in Edinburgh, gave in a bill, representing that, for a small sum due by him upon bond to Mr William Cheilly, his whole sums were arrested; which being upon a decret of registration, the clerks refused to loose upon caution; and therefore petitioned that the LORDS would ordain the same to be past upon sufficient caution, because it impeded him in his whole trade.

VOLA II. 5 H

No 130.

No 131.

Found that a decree, although suspended before arrestment, was not loofeable upon caution.
 See No 136.
 P. 796.

No 132.

Arrestment upon a registered bond or decret, is not loofeable upon caution, but upon con-