

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 lifts 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.

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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-

No 132.
 signation of
 the principal
 sum and an-
 nualrent, and
 caution for
 the penalty.

THE LORDS refused to loose the arrestment, being upon a decret, upon caution; but granted the same upon consignation of the principal sum and annualrent contained in the bond, which was the ground of the arrestment, and caution for the penalty.

Fol. Dic. v. 1. p. 59. Stair, v. 2. p. 333.

1675. June 30.

HALL against MURRAY.

No 133.
 The decreet
 being turned
 into a libel,
 arrestment is
 loofeable up-
 on caution.

ARRESTMENT being upon a decret; and the said decret being thereafter turned in a libel, the LORDS found, That the decret ceased to be a sentence; and the arrestment thereupon is now of the nature of an arrestment upon a dependence, and may be loofed.

Clerk; Gibion.

Fol. Dic. v. 1. p. 59. Dirleton, No 284. p. 138.

Stair likewise mentions this case :

JAMES MURRAY having charged John Hall, and arrested his goods upon a decret, he suspends, whereupon the decret was turned to a libel, and thereupon the suspender craved that the arrestment might now be declared null, at least might be loofed.

THE LORDS ordained the arrestment to be loofed.

Stair, v. 2. p. 338.

1675. November 4.

MOSSMAN, Supplicant.

No 134.
 Arrestment in
 security be-
 fore the term
 of payment of
 the arresting
 debt is loofe-
 able upon
 caution.

WIGHTMAN in Edinburgh gives bond to his wife, obliging him to pay to her, her heirs and executors, 4000 merks, in satisfaction of her third, and provision of their conquest, and the contract, payable at the first term after his own death; the wife having died before the husband, her nearest of kin, — Mossman, confirms herself executrix to the defunct's wife, and gives up in inventory this bond of 4000 merks, and thereupon obtains decret against Aikman the husband, and upon the decret arrests several sums of his, whereupon Aikman gives in a bill for loofing the arrestment; but, in respect that ordinarily arrestments upon decreets cannot be loofed; the matter was considered by the LORDS, and they remembered that lately they had loofed arrestment upon consignation of the sum, for which the arrestment was laid on.

And they found, That, in this case, the term of payment neither being come, nor near, being after the debtor's death, who is yet alive, that there was no reason his whole means should lie under arrestment all his life; they did therefore loose the arrestment upon sufficient caution, at the sight of the Lords.

Fol. Dic. v. 1. p. 59. Stair, v. 2. p. 363.