

No 132.

Signation of the principal sum and annualrent, 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 decret being turned into a libel, arrestment is loofeable upon 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 before the term of payment of the arresting debt is loofeable 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.*