

1695. January 18.

FRASER *against* CLEGHORN.

HALCRAIG reported, Barbara Frazer, relict of George Stirling apothecary in Edinburgh, *contra* James Cleghorn.—*Alleged*, Her arrestment in Renton of Lamerton's hands is null, because laid on for a debt whereon infestment had followed, contrary to the act 1661.—*Answered*, The ground of arrestment is a moveable bond; and though there was a supervenient heritable security taken for the same debt, yet it was but corroborated, and being *accumulando jura jure*, it does not hinder the creditor to make use of any of them he pleased.—*Replied*, It was a novation of the former security, not being relative thereto.—THE LORDS found novation was not to be inferred, but where it was expressed to be the parties meaning, and sustained the arrestment.

*Fol. Dic. v. 1. p. 54. Fountainball, v. 1. p. 660.*

1702. January 6.

MR ROBERT BLACKWOOD, Merchant in Edinburgh, *against* ADAM BROWN, Dean of Guild of Edinburgh.

MR ROBERT BLACKWOOD being cautioner for John Watson in great sums of money, obtains a bond of relief, in these terms, obliging the said Watson to relieve the said Mr Robert, and retire the creditors' bonds, betwixt and a certain day.

Mr Robert Blackwood not being relieved, nor his bonds retired, arrests in the hands of Adam Brown, who, in the furthcoming, depones, That he was no ways debtor to Watson; but that, being creditor to him in great sums, Watson dispones certain of his effects for his security and payment.

Blackwood craved a re-examination, and that he might condescend upon these effects, and the debts due to him, and instruct the same, and not be his own judge, both in charge and discharge.

The defender *alleged*: He was neither bound to have deponed at all, nor is he now obliged to answer any further interrogatories; because the ground of the pursuer's arrestment is no bond for a liquid sum of money or debt, but a bond of relief, which is an obligation for a fact, *viz.* to relieve him, and retire his bonds; in which he followed the faith of his debtor, whom he ought to distress, but cannot thereupon crave his money to be made furthcoming; for the obligation to relieve, &c. does not afford him any title of intromission; and therefore no decree of forthcoming can follow. And further, it is a known and ordinary style in bonds of relief, that, for the cautioner's further security, the obligant is bound to pay the sums to his cautioner, that he may relieve himself; which ordinary caution being neglected, the pursuer must hold himself to his bond in the terms he has taken it.

No 19.

Arrestment sustained on a personal bond, though there was an heritable bond of corroboration and infestment.

No 20.

A bond of relief, obliging the grantor to relieve his cautioner, and retire the creditor's bonds, betwixt and a certain day, being *ad factum prestantum* only, found no ground for arrestment, even after the day had elapsed.