

of his debts and damages, for which he shall have ready execution against the injurer,' b. 1. tit. 9. § 29. To which the suspender *opposed* a passage of Mr Erskine, who, speaking of an arrestee acting in contempt of the diligence, says, 'He may be condemned to pay the whole debt a *second time* to the arrester,' by which the debt originally due by himself appears to be meant, b. 3. tit. 6. § 14.

No 122.

THE LORD ORDINARY at first pronounced this interlocutor: 'Finds, That by the law of Scotland, a person who commits breach of arrestment, does thereby subject himself in payment of the whole debt contained in the decree or horning on which the arrestment was used, although the value of the subject arrested be much less; and that the law, as to this particular, is not more severe, or less reasonably so, than in cases of escape from prison.' But his Lordship afterwards took the cause to report on informations.

The Court were clearly of opinion, That by a just interpretation of the statute, the contravener could be liable no farther than *in valorem*; and it was observed, that not only Lord Stair, but all the writers, not excepting Mr Erskine, had expressed themselves somewhat inaccurately on this subject.

It was farther observed, that there was an obvious distinction between a case of this kind, and that of escape from prison; for in the one the amount of the loss resulting to the creditor may be easily known; but with regard to the other, it might be impossible to tell what exertions in the debtor *squalor carceris* could produce.

THE LORDS found, That no action lay on the statute *ultra valorem*.

Reporter, Dregborn. A.S. Cullen, J. Grant. Alt. Dean of Faculty, Bailie. Clerk, Menzies. Stewart. Fol. Dic. v. 3. p. 45. Fac. Col. No 209. p. 439.

Loosing Arrestment.

1533. June 4. A. against B.

ARRESTMENT beand maid upon guidis or cornis, and the awner thair of offeris to find caution to answer as law will, it is sufficient that the caution be fund, that ather the samin self guidis, or ellis the avall thair of, fall be furthcomand to ony partie havand interes.

Balfour, (ARRESTMENT.) p. 538.

No 123.
Caution for the value of the goods was sufficient, not to return the *ipia corpora*.