

1575. *January 21.*LAIRD of Corstophine, *against* the LAIRD of Lethingtoun.

No. 124.

Arrestment of
corns, peats,
&c. if used
the first year
of the ar-
restee's pos-
session of the
ground, could
not be loosed
on caution,
after the first
year it could.

ARRESTMENT beand maid upon cornis growand upon ony landis, or upon peittis, turvis, divettis, or ony fewell castin in ony ground, the famin on na wayis fall be loufit, nor the landis lettin to borch to ony person, gif it be the first zier of the riving furth, tilling and sawing of the said cornis, or casting and winning of the said fail divettis and fewall; but the famin fall remane arreistit upon the ground quhill the ground richt be decidit, and cognitioun be takin quha has just richt thairto: But gif it be not the first time, nor the first zeir's crop, the famin arreistment aucht and fould be loufed, he at quhais instance it is loufed findand caution to answer thairanent as law will.

Balfour, (ARRESTMENT.) p. 538.

1619. *January 15.*GORDON *against* BRODIE.

No. 125.

Found, That arrestment being loosed, the party in whose hands the money is arrested may lawfully pay.

Kerse, MS. (ARRESTMENT.) fol. 235.

No. 126.

A cautioner,
in loosing ar-
restment,
found liable
to pay to the
arrester, after
his debt was
constituted a-
gainst the
common
debtor, and
that without
further dis-
cussion of the
persons in
whose hands
arrestment
was used.

1626. *June 21.*Lo. BALMERINO *against* L. LOCHINVAR.

IN an action at the Lord Balmerino's instance against L. Lochinvar, who was pursued to make a sum of money furthcoming to him, which was arrested in Den-miln's hands, as owing by him to the L. Balfour, who was decerned to pay to the Lo. Balmerino a sum of money decerned against him, and for payment of the which sum, decerned by that sentence to be paid to the pursuer by the L. Balfour, that sum was arrested in Den-miln's hands, and he pursued to make it furthcoming; for loosing of the which arrestment, the L. Lochinvar became acted cautioner, and who as cautioner was conveyen for payment of that sum arrested.—In this process the LORDS found the L. Lochinvar could not be pursued as cautioner foresaid, while it was first tried, and found by sentence that Den-miln, in whose hands the arrestment was laid, was debtor to the Laird Balfour in the sums arrested; for if he was not addebted the time of the said arrestment, in the sums to the Laird Balfour, the becoming of Lochinvar cautioner at the loosing of the arrestment, could not make him to be debtor; and so the LORDS found no process against him, as cautioner foresaid, while sentence was recovered, finding the person debtor, in whose hands the arrestment was made.

In this process the LORDS found, and were of the mind, That the loosing of the arrestment, by finding caution, freed the person in whose hands the arrestment