

1679. *December 23.*GRIEVE, Tenant to JOHNSTON of Westeraw, Supplicant, *against* —.

THE Laird of Westeraw having taken a decret against Grieve, his tenant in his own Court, for Green-Wood, and arrested thereupon: The tenant desires the arrestment to be loosed upon caution, whereupon it occurred to the Lords, to consider the common privilege, by the stile of loosing arrestments, which bears an exception, *providing it be not on a decret*, and found that it extended to Barons decreets; and therefore refused the bill.

*Fol. Dic. v. 1. p. 59. Stair, v. 2. p. 727.*

No 138.

Arrestment upon a baron baillie's decret, is not looseable upon caution.

1681. *November.*GARDINER *against* GARDINER.

ARRESTMENT used upon a decret, after the passing of a bill of suspension thereof, but before the suspension was intimated or signeted, found looseable upon caution, after expeding of the suspension at the signet.

*Harcarse, (ARRESTMENT.) No 74. p. 14.*

No 139.

1685. *February.*ALEXANDER FORBES *against* JOHN HEBURN.

ONE having regiftrate a contract, and charged thereon the other party to fulfil in the hail heads and clauses, &c. and also used arrestment: THE LORDS found the arrestment looseable on caution, though laid on by virtue of a decret of registration.

*Harcarse, (ARRESTMENT.) No 88. p. 17.*

No 140.

1685. *March 31.*LADY KETTLESTON *against* JOHN HAY.

ARRESTMENT upon a decret appointed to be loosed upon juratory caution, when the decret was turned into a libel.

*Harcarse, (ARRESTMENT.) No 86. p. 17.*

No 141.

1695. *November 28.*ARCHIBALD STUART *against* JOHN MARSHALL.

ARCHIBALD STUART, younger of Blackhall, by petition, complained, John Marshall, apothecary in Glasgow, having stolen out a decret against him for L. 250, as the price of drugs, holding him confessed, and thereon had arrested his horses; whereof he had obtained suspension; but the charger either delayed to insist, or would offer to prove his libel by witnesses; and seeing the horses were detained,

No 142.

Arrestment on a decret in absence, found not looseable on caution.

No 142. and in a short time would eat up their own heads, he craved the arrestment to be loosed upon sufficient caution.—THE LORDS finding the arrestment was laid on by virtue of a decret, and the suspension posterior thereto, they could not loose it upon caution; but they fell on this *medium*, if he would consign the full sums in the decret charged on, they would ordain the same to be loosed, especially seeing the suspender would be reponed against the decret, when the cause came to be discussed. See a singular case recorded by Stair, 16th July 1661, College of St Andrew's, No 128. p. 791.

*Fol. Dic. v. 1. p. 59. Fount. v. 2. p. 681.*

1705. July 31.

ANDREW M'FARLAN, Merchant in Edinburgh, *against* ALEXANDER COWIE.

No 143.

An arrestment upon a registered contract was loosed upon caution, the obligation in it being general and illiquid.

ANDREW MACFARLAN and Alexander Cowie having, in September 1704, by a contract of copartnery, mutually obliged themselves to stock in equally in money and goods to a certain value, to be employed in trade for their joint use, and to be equal gainers and losers; and their affairs falling into disorder in December thereafter, so as they were forced to retire to the Abbey for sanctuary: M'Farlan, after they had compounded with their creditors, caused regiftrate the contract, raised horning thereon, and arrested all Cowie's effects: Which arrestment, though proceeding on a regiftrate contract, that was a kind of decret, the LORDS allowed to be loosed upon caution; because the charge being general, and for no liquid sum, is of the nature of a depending action.

*Fol. Dic. v. 1. p. 59. Forbes, p. 39.*

1707. July 18.

MARGARET CRICHTOUN, Relict of THOMAS MOFFAT, *against* Mr JOHN BORTHWICK of Cruickstoun.

No 144.

An arrestment is effectually loosed, though the letters of loosing be not intimated to the arrester.

THOMAS MOFFAT having, as creditor to James Tweedie, in the sum of L. 342, arrested the like sum in the hands of Mr John Borthwick of Cruickstoun, and afterwards disponed the debt and diligence to Margaret Crichtoun, his spouse: She pursued a furthcoming, wherein Cruickstoun *alleged*, That he ought to be assilzied, because he had paid conform to letters for loosing the arrestment produced.

*Replied* for the pursuer:—That if Cruickstoun had paid, he had paid unwarrantably, the letters of loosing never having been executed against the arrester: For the letters bear, 'That intimation be made to the arrester, that the arrestment is loosed, and caution found,' otherwise the arrestment to remain unloosed. The reason of this stile is, because, if the loosing be not intimated, the arrester