

1749. *February 19.* MILLER *against* WILSON.

No. 21.
Arrestment is
lawful after
suspension.

Wilson having obtained decree against Miller, of which Miller obtained suspension, in which caution, as usual, had been found, Wilson arrested Miller's effects wherever he could find them; which the suspender having laid before the Lords by a summary complaint, as a contempt of authority,

The Lords "found no ground for the complaint, and refused the desire thereof."

No law hinders one to arrest or inhibit notwithstanding a passed suspension. The effect of a suspension passed, is only to turn the decree to a depending process, on which arrestment and inhibition may proceed.

Fol. Dic. v. 4. p. 320. Kilkerran, No. 17. p. 45.

* * See a similar case, 22d February, 1750, Henderson against Smith, No. 17. p. 6563. *voce* IMPLIED OBLIGATION.

1765. *February 13.*

DOWNIE and HERCULES, Weavers in Paisley, *against* JAMES CORR, &c.

No. 22.
Where the
charger takes
out a bill of
suspension to
answer, this
implies a con-
tinuance of
the sist till
the answer be
given in and
advised.

A charge being given upon a registered contract, a bill of suspension was presented, 9th December, 1764, upon which the Ordinary on the bills granted a sist, and ordained the bill to be intimated; which was done, 11th December, and a regular execution of intimation was returned and lodged in the Bill-chamber. A copy of the bill of suspension was taken by the agent for the chargers, in order, as he said, to make answers to it; but no answers were given in. This prevented the bill from passing so soon as it otherwise would have done; and, in the mean time, the days of the sist being expired, the chargers proceeded to execution by poinding.

This produced a complaint, in which it was considered, that as, by act of sederunt, an Ordinary cannot give a sist above fourteen days, it clearly follows, that after the sist is elapsed execution may proceed. But if the charger take out the bill to answer, this implies a continuance of the sist till the answer be given in and advised. Here the bill was taken out to answer; and for that reason the chargers were found liable in damages.

Hence it follows, that if the charger do not undertake to answer the bill of suspension, he may proceed to execution after the sist is elapsed, though the bill of suspension has been intimated to him. It also follows, that, in this case, it is incumbent upon the clerk of the bills to present the bill to the Ordinary during the running of the sist, that it may be passed or refused.

Fol. Dic. v. 4. p. 320. Sel. Dec. No. 228. p. 298.