

1611. July 11. THOMAS WARDLAW *against* ROBERT GRAY.

No 119.

ARRESTMENT being laid, the party to whom the goods pertain, or in whose hands they are arrested, having received a copy, or ticket of the arrestment, and thereafter introrried with the goods, the arrestment not being orderly loosed, may be pursued for breaking of the arrestment, and confiscation of his goods, and punishment of his person. But, another party who had no knowledge of the arrestment, meeting therewith, may only be pursued to make the goods forthcoming.

Haddington, MS. No 2268.

1620. June 24. AITKEN *against* ANDERSON.

No 120.

THE LORDS found that an arrestment made upon goods, could not hinder the lieges to buy in public market. See A. *against* B. No 116, p. 785.

Kerse, (ARRESTMENT.) fol. 235.

1621. June 13. DUNBAR *against* HAY.

No 121.

FOUND where debts are arrested, the payer cannot be convened for break of arrestment.

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

1792. February 27. ALEXANDER GRANT *against* JOHN HILL.

No 122.

Found, that no action on the statute 1581, c. 18, lies for breach of arrestment, *ultra valorem*.

GRANT being a creditor of Alexander Rodger, to whom Hill succeeded as tenant in a farm, used arrestment against Hill, of a hay-stack which Rodger had left on the ground. Hill notwithstanding having allowed the hay to be carried off, Grant raised against him an action on the statute of 1581, concluding, in his libel, for payment of his whole debt, and for the farther application of the statute; the debt amounting to upwards of L. 700, and the value of the hay being L. 30.

Grant having obtained decree in absence, Hill brought it under review in a process of suspension, on various grounds, such as, that he was not the custodier of the hay; but what chiefly occupied the attention of the Court was the objection, that at all events Hill could not be liable *ultra valorem* of the subject arrested.

The charger insisted on the authority of the following words of Lord Stair, with respect to *breakers of arrestment*, 'That the party injured shall be first paid

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.

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.