

factor in Paris, and pursuing to make forthcoming, but the process not being ready to come in by the course of the roll,—the pursuer supplicated, that, in respect the arrestment was loosed, and a cautioner altogether insufficient found, that therefore the Lords would declare the loosing of the arrestment null, and a new arrestment to be granted. The Lords having considered the case, and, finding the cautioner could not be known, but was altogether insufficient, they insinuate to the clerks of the bills, that cautioners taken for loosing of arrestment had been admitted, without any notice of their sufficiency; that, in time coming, the same care should be had of their sufficiency, as of cautioners in suspensions. And, as to this case, the Lords ordained new arrestment to be raised upon this special warrant; and declared the same should be sufficient as to any goods or sums that should happen to be in the hands of Mowat's creditors, the time of the execution of the second arrestment, notwithstanding the former arrestment was loosed; but would not declare the loosing null, as to what these creditors might have paid *bona fide* to Mowat, after the loosing of the first arrestment, and before the execution of the second arrestment.

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1673. July 4. DAVID MURMAN *against* CAPTAIN FRENCH.

DAVID Murman having obtained decret against Captain French for spuilyie, or wrongous intromission with forty sheep, he suspends on this reason, That, since the decret, he had obtained the charger's discharge. The charger answered, That the discharge was elicited from the charger, who is an idiot, and understood not what he was doing, by touching the pen of the notary in subscribing the discharge. It was replied, That idiotry was not receivable till it was instructed by a service of idiotry, as law requires. It was duplied, That a service of idiotry is necessary for taking away all deeds done by the idiot; but, where a particular deed is only questioned, it may be taken away, either upon the reason that the party at the time was not *mentis compos*, or was circumvened, which are relevant reasons of reduction, without a service; and here the charger hath a reduction. The Lords having called for the charger, and finding him a very weak simple person, but not absolutely an idiot, they sustained his reduction upon the circumvention, without a service of idiotry.

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1673. July 24. CAPTAIN BENNET *against* The MASTER of the PEARL.

CAPTAIN Bennet having taken the Swedish ship called the Pearl, she was adjudged prize;—whereof reduction being raised and disputed, the Lords found the ship and loading prize on these grounds:—That the ship, being bound for Amsterdam, laden with 491 fats of potashes, there were only documents aboard to show the property of 447 fats; and of these a great part was marked with several merchants' marks, and the initial letters of their names; which they found a clear evidence that the property belonged to these merchants, and not to mer-