

1675. *November 20.* WARDEN, Supplicant.

——— Warden, having given in a supplication for loosing of an arrestment laid on by one Barry upon a decret, upon this reason, That albeit, ordinarily, that arrestments laid on upon decreets are not loosable upon caution, yet here the decret was suspended before laying on of the arrestment ; by which it became not to be a liquid sentence, but became a dependence. Which the Lords sustained ; and the arrestment to be loosed upon caution.

*Vol. II, Page 372.*

1675. *December 3.* ROBERT ARBUTHNOT *against* HENRY BARCLAY.

ROBERT Arbuthnot pursues declarator of the escheat and liferent of Colonel Henry Barclay ; in which pursuit this defence was found relevant, That the Colonel was relaxed, within the year, at the head burgh of the shire where he dwells, and the relaxation registrate. The act being called in the Outer-house, and the term craved to be circumduced, the Colonel produced a relaxation at the cross of Edinburgh, registrate there, and another relaxation at the cross of Mernes, where he dwells, but not registrate there. The pursuer alleged, That this production could not stop certification, because it satisfied not the desire of the act, requiring a relaxation at the cross where the defender dwelt, duly registrate. The defender answered, That he produced writs *ad modum probationis*, and referred the same to be advised by the Lords, whether proven or not proven ; which could only be done *in præsentia*, and not in the Outer-house. The pursuer replied, That, albeit the sufficiency of the probation was only competent to the whole Lords, where there could any doubt arise, yet, as in other cases, so in this, where the matter was clear, the Ordinary might determine ; otherwise the production of any writ, though nothing relating to the matter in question, would stop the circumduction of all acts probable by writ, and put them to the delay of coming in by the roll of concluded causes, to their great delay and detriment. The defender duplied, That it was free for him to debate *in præsentia*, whether he had proven sufficiently *ad victoriam causæ*, though not all that the act required. And here he would instruct, that he had proven sufficiently, because he had produced his relaxation, to the keeper of the register, *debito tempore*, which behoved to supply the registration ; in which case the Ordinary could not judge. The Lords found, That writs not relative to the matters in question could not stop the certification ; but that thir writs, relating to the matter contained in the act, and having any doubtfulness, behoved to stop the certification, and come in as a concluded cause.

*Vol. II, Page 374.*

1675. *December 10.* GEORGE KEITH *against* DAVID MURRAY.

GEORGE Keith pursues David Murray for wrongous intromission with fifty-