

No 136.

1675. November 20.

WARDEN *against* BERRY.

THE LORDS found, That an arrestment upon a decret, after it was suspended, may be loosed upon caution. Done upon a bill. See No 131. p. 793.

Clerk, *Hamilton.**Fol. Dic. v. 1. p. 59. Dirleton, No 300. p. 147.*

* * * Gosford observes the same case thus :

THERE being a new query made to the Lords, by the Ordinary upon the bills : If an arrestment upon a decret, which was suspended, could be loosed, upon caution ? It was *debated*, That, by our law and custom, no arrestment upon a decree could be loosed ; but, on the contrary, it was *urged*, That the decret being suspended upon caution, ought not to have that same force as a standing decret, which was never suspended ; seeing the suspension did not only suspend all execution, but make the subject of the decret to be again called in question ; and the creditor being sufficiently secured by caution, it was *against* reason, that, by an arrestment, which was a real diligence, he should be incapacitated to make use of his goods or debts, and so have nothing to live upon.—The Lords did find, that the arrestment ought to be loosed upon sufficient caution, our law and custom being only, where decreets were standing unsuspended ; but the reasons thereof could not be extended where decreets were suspended ; but yet they were all of opinion, that inhibitions might be truly served upon decret standing suspended.

Gosford, MS. No 807.

No 137.

After decree has followed on a dependence, arrestment is still looseable upon caution.

1677. June 9.

SIBBALD of Rankillor *against* SIBBALD.

SIR DAVID SIBBALD having disposed his estate to Henry Sibbald, his son, with reservation of an annuity to himself, did raise a process for payment, and arrested the tenants duties upon the dependence, and thereupon having obtained decret for payment, he insists now for making the rents furthercoming.—The tenants *alleged*, That the arrestment was loosed upon caution, whereupon they paid.—It was *answered*, That the loosing of the arrestment contains an express provision, *unless the arrestment proceeded upon a decret* ; and albeit this arrestment was on a dependence, yet there having supervened a decret upon that dependence, before the loosing of the arrestment, it was equivalent as if the arrestment had been upon the decret.

THE LORDS found, That an arrestment, upon a dependence, might be loosed upon caution, albeit a decret on that dependence preceded the loosing of the arrestment.

Fol. Dic. v. 1. p. 59. Stair, v. 2. p. 521.