

1695. January 18.

FRASER against CLEGHORN.

HALCRAIG reported, Barbara Frazer, relict of George Stirling apothecary in Edinburgh, *contra* James Cleghorn.—*Alleged*, Her arrestment in Renton of Lamerton's hands is null, because laid on for a debt whereon infestment had followed, contrary to the act 1661.—*Answered*, The ground of arrestment is a moveable bond; and though there was a supervenient heritable security taken for the same debt, yet it was but corroborated, and being *accumulando jura jure*, it does not hinder the creditor to make use of any of them he pleased.—*Replied*, It was a novation of the former security, not being relative thereto.—THE LORDS found novation was not to be inferred, but where it was expressed to be the parties meaning, and sustained the arrestment.

*Fol. Dic. v. 1. p. 54. Fountainball, v. 1. p. 660.*

1702. January 6.

MR ROBERT BLACKWOOD, Merchant in Edinburgh, *against* ADAM BROWN, Dean of Guild of Edinburgh.

MR ROBERT BLACKWOOD being cautioner for John Watson in great sums of money, obtains a bond of relief, in these terms, obliging the said Watson to relieve the said Mr Robert, and retire the creditors' bonds, betwixt and a certain day.

Mr Robert Blackwood not being relieved, nor his bonds retired, arrests in the hands of Adam Brown, who, in the furthcoming, depones, That he was no ways debtor to Watson; but that, being creditor to him in great sums, Watson dispones certain of his effects for his security and payment.

Blackwood craved a re-examination, and that he might condescend upon these effects, and the debts due to him, and instruct the same, and not be his own judge, both in charge and discharge.

The defender *alleged*: He was neither bound to have deponed at all, nor is he now obliged to answer any further interrogatories; because the ground of the pursuer's arrestment is no bond for a liquid sum of money or debt, but a bond of relief, which is an obligation for a fact, *viz.* to relieve him, and retire his bonds; in which he followed the faith of his debtor, whom he ought to distress, but cannot thereupon crave his money to be made furthcoming; for the obligation to relieve, &c. does not afford him any title of intromission; and therefore no decree of forthcoming can follow. And further, it is a known and ordinary style in bonds of relief, that, for the cautioner's further security, the obligant is bound to pay the sums to his cautioner, that he may relieve himself; which ordinary caution being neglected, the pursuer must hold himself to his bond in the terms he has taken it.

No 19.

Arrestment sustained on a personal bond, though there was an heritable bond of corroboration and infestment.

No 20.

A bond of relief, obliging the grantor to relieve his cautioner, and retire the creditor's bonds, betwixt and a certain day, being *ad factum prestantum* only, found no ground for arrestment, even after the day had elapsed.

No 20.

It was *answered*: That an obligation to relieve the pursuer, and retire his bonds, implies every thing that may make the relief effectual; and consequently, that his debtor's means may be affected, and made furthcoming. *2do*, The defender did already acquiesce, in as far as he deponed in the furthcoming, and cannot now decline to clear his former oath. *3tio*, In another process of furthcoming, on the same bond, against Margaret Seaton, the Lords did oblige her to depone in the furthcoming. *4to*, The pursuer doth further liquidate his claim, by condescending and instructing the debts he has paid, in which he is a liquid creditor.

It was *replied*: The obligation of relief implies no more than the words do express, by which nothing was intended, but to oblige Watson personally. *2do*, The defender might have declined to depone at first; and now he declines to lay his business open to the pursuer, who has no interest to require it. *3tio*, Margaret Seaton had been holden as confessed; and in a suspension craved only to be reponed to her oath; and, though she did offer the same grounds, yet she insisted only *ad hunc effectum*, to be reponed, in which she prevailed. *4to*, It alters not the case, though the pursuer may have paid certain of the sums expressed in the bond of relief, and thereby is become a liquid creditor; seeing his right to these bonds is not the foundation of the arrestment and furthcoming.

THE LORDS found, a bond to relieve the pursuer, and retire his bonds in the terms above expressed, was no ground for arrestment and furthcoming.

*Fol. Dic. v. 1. p. 54. Dalrymple, No 33. p. 41.*

1712. February 26.

KATHARINE ROSS, Relict of David Dickson, Supplicant, *against* WILLIAM RENTON, Factor to the Estate of Begbie.

No 21.

A depending process of reduction, (which does not conclude for payment of money) is not a proper ground of arrestment.

UPON a representation made by Katharine Ross, that William Renton had arrested all her effects, upon the dependence of a process of reduction raised by him against her:—THE LORDS found, That the depending reduction (which concludes not the payment of money, but the removing a right out of the way) is not the proper ground of arrestment: And therefore ordained the arrestment, used upon that depending process, to be loosed without caution or consignation.

*Fol. Dic. v. 1. p. 54. Forbes, p. 594.*

1712. June 17.

WILLIAM KER of Chatto, *against* WALTER SCOT of Well, and OTHER CREDITORS of Sir WILLIAM and ROBERT SCOTS of Harden.

No 22.

An heritable bond, before infestment,

THE deceased Robert Scot of Harden having, as heir, served and retoured in in general, and executor to Sir William Scot of Harden, his brother, disposed to