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which upon their oaths they should depone was then resting addebted, albeit more was arrested. And albeit some were of the mind, that he should be holden to pay the whole debt arrested, seeing the arrestment was loosed by his being cautioner, whereby he had undertaken the whole debt arrested, and had so engaged himself *suo facto* therein, which was repelled by the LORDS, and found, that in such cases of loosing arrestments, the cautioners are only subject to, and in hazard to pay the sums truly owing at the time of the arrestments, albeit greater sums be arrested.

Act. *Hope, Stuart & Lermontb.* Alt. *Nicolson, Aiton & Belsbes.* Clerk, *Hay.*

Fol. Dic. v. 1. p. 60. Durie, p. 204. & 267.

* * * The same case is thus reported by Spottiswood :

SIR JAMES BALFOUR being addebted in 4000 merks to my Lord Balmerino, my Lord arrested as much in my Lord Burley's and Michael Balfour of Den-miln's hands, that they were owing to Sir James. This arrestment was loosed by the Laird of Lochinvar, who acted himself caution for the same sums to Balmerino; he afterwards pursued Lochinvar therefor, by way of action to see himself concerned as cautioner foresaid, to pay the same.—It was *alleged* by him, That this being a subsidiary action, he behoved first to have decret against them in whose hands he had arrested, that it might be known that they were duly owing so much to Sir James.—*Replied*, That the arrestment was loosed, so that he had no further action against them, but the cautioner became his debtor in all *eo ipso tempore*, that he had loosed the arrestment.—*Duplied*, That he was no more obliged but as law would.—THE LORDS found, That the cautioner had place to propone any thing that they in whose hands it was arrested might have done; either that it was paid to Sir James before the arrestment, or that there was not so much owing in their hands: For they thought that there might be collusion betwixt the creditor and his principal debtor, or them in whose hands he had arrested in prejudice of the cautioner.

Spottiswood, (ARRESTMENT.) p. 16.

1661. July 4. REITH OF EDMONSTON *against* the LAIRD OF NIDDRIE.

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Arrestment an a dependence was loosed on caution. The common debtor afterwards assign-ed the sum. The assignee

JOHN BOYD merchant in Edinburgh, as assignee constituted by the Laird of Wolmet, to a decret obtained at his instance, against Niddrie, for payment of the sum of 7000 merks, for which he gave bond to umquhile Wolmet for James Reith of Edmonston, his good-brother, as an asyhtment for the mutilation of the Laird of Wolmet by Edmonston, who cut off Wolmet's left hand. Niddrie suspended on double pointing, called the said John Boyd, Jean Douglas, umquhile Wolmet's relief, and the said James Reith.—It was *alleged* for Niddrie and the

said James Reith, That the decret did bear the sum not to be payable till there were delivered, a sufficient letter of flains and remission for the mutilation; but the letters of flains now produced is not sufficient, because it did bear only the remission of an accidental mutilation, and this mutilation being of purpose. *2do*, It was only subscribed by Wolmet's heir, and not by his wife and their children.—It was *answered* for the chargers, That there was no necessity of a letter of flains for mutilation, but the remission alone was sufficient. *2do*, This sum was granted for asyhtment to unquihlé Wolmet himself in his lifetime, and the decret mentioned a letter of flains grant by him. *3tio*, Any interest his wife or bairns could have, was only for asyhtment of their damage, which could be none; seeing Wolmet was a landed gentleman, and did not entertain his family by his handy work.—THE LORDS repelled the reason of suspension; in respect of the answer on the decret and letters of flains produced, which they found sufficient.—It was also *alleged* by the said Jean Douglas, That she ought to be preferred to the said John Boyd, because she had arrested the sum long before his assignation.—It is *answered* for Boyd, The arrestment was upon a dependence and loosed; and there is yet no decret upon the dependence.—It is *answered* for Douglas, That the loosing of the arrestment would have freed Niddie, if he had actually paid the sum; but it being yet in his hand, it ought to prefer her as creditor, doing first diligence; especially, seeing Wolmet, the time of the assignation, was rebel and bankrupt.—THE LORDS preferred the assignee, in respect there was no decret extracted upon the dependence; reserving to the arrester, after sentence, to reduce upon the prior diligence as accords, &c.

Fol. Dic. v. 1. p. 59. Stair, v. 1. p. 50.

1661. July 16. COLLEGE OF ST ANDREW'S, Supplicant.

THE College of St Andrew's supplicate, That in respect their hail rents were arrested, at the instance of Doctor Gleig, and thereby they were not able to entertain their table and burfers; craved the arrestment to be loosed, without caution, in respect they were an incorporation, for whom no body would be caution.

THE LORDS, after debating the case amongst themselves, whether arrestment could be loosed without caution, or upon juratory caution, thought it could not; but in this case, they allowed the same to be loosed, the Masters of the Colleges giving a bond, to bind themselves and their heirs personally, for what should be uplifted by any of them, whereby every person stood caution for his own intromission for the University, they not being otherways bound *personaliter* ut only *secundum officium*.

Fol. Dic. v. 1. p. 59. Stair, v. 1. p. 52.

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preferred to the arrester, only because no decret was extracted on the dependence. If there had, the arrester would have been preferred, notwithstanding the loosing, the sum remaining unpaid.

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The rents due to an incorporation being arrested; caution by the members themselves personally, was received for loosing arrestment.