

1665. February 7. GRAHAM *against* BRUCE.

No 129.
Found, that
loofing arrest-
ment did not
liberate the
debtor, in
whose hands
the fum was
arrested,
while it re-
mained un-
uplifted by
the loofer.

IN an action pursued at the instance of David Graham taylor, against George Bruce and Doctor Martine, to make arrested money furthcoming; it was found, That the loofing of the arrestment did not liberate the debtor in whose hands the samen is arrested, in regard it was still resting by him, un-uplifted by the loofer.

Fol. Dic. v. 1. p. 59. Gilmour, No 125. p. 91.

Stair reports the case thus.

DAVID GRAHAM, upon the fight of a bond unregistrate, of George Bruce's, obtained arrestment; and therewith arrested a fum in Doctor Martine's hand, which was loofed, and after the loofing, assignation was made by George Bruce to his sifter.

In which case, the LORDS found, That the arrestment being upon the bond, before registration, might be loofed; and, notwithstanding of the loofing, seeing it was not now paid by the debtor, they ordained it to be made furthcoming to the arrefter, and preferred him to the assignee; albeit, it was *alleged*, That the tenor of the arrestment was but till caution was found; which being found, albeit the debtor could not oppose to make it furthcoming, yet an assignee, after loofing the arrestment, may let.

THE LORDS considered, that the caution found, in loofing arrestments, is overlie and insufficient; and so would not infecure creditors, doing diligence by arrestment. (*See* LEGAL DILIGENCE.)

Stair, v. 1. p. 265.

1673. December 19.

MR PATRICK HOLME, Advocate, *against* GEORGE HOLME.

No 130.
Arrestment
upon a de-
pendence
may be loof-
ed upon cau-
tion.

THE Laird of Aytoun being debtor to the late Justice-Clerk, and being charged to make payment, did suspend upon consignation; after which Mr Patrick getting an assignation from his father, and obtaining a consent from Aytoun, did crave, by a bill, that the clerks might be ordained to give him up the configned money. Against which George Holme having compeared, did *allege*, That he, being creditor to the Justice-Clerk, did arrest the said fum in the Laird of Aytoun's hand before the consignation: Which arrestment, being a real diligence, did so affect the money, that Aytoun's consent was not sufficient to take away the benefit of the arrestment. It was *answered* for Mr Patrick, That the Laird of Aytoun who did consign the money, as he might have paid the same, notwithstanding of the arrestment, and taken his hazard to have been made liable to the arrefter in the action to make furthcoming, so it was in his power to pass from the config-