

*tum*, for they, if they were called, may allege that this bond being the price of the loading, comes in place thereof, *et sapit naturam surrogati*, but if the loading were extant, and disposed by the privateer, an arrestment upon the reduction would affect the same, and so it must be the price thereof even against an assignee; for if the Lords' decret be reduced, the assignation by the Privateer to the process, and suspenders' bond would fall in consequence, and the assignee would be obliged to repeat. *2do*, The arrestment must be purged by loosening, because it is offered to be proved by the assignee's oath, that the assignation is to the behoof of Ludquhairn, whose sums are arrested, at least is without an onerous cause, and so could not prejudge the strangers. It was *quadruplied*, That the debtors will be secure, they paying upon the Lords' sentence, whoever be called; and seeing there is a decret *in foro*, if arrestments upon a dependence shall stop the effect of the decret, and put the assignee to a necessity to find caution, it would render all decreets *in foro* ineffectual, for a summons of reduction with an arrestment, would be as good as a suspension; and whereas the suspender should find caution, will necessitate the charger to find caution. It was *quintuplied*, That if the price of the loading be thus carried away from the strangers, though they should reduce, it would be to no purpose, seeing neither the Privateer nor his owners are in that condition, that the strangers will be able to recover their money.

THE LORDS in consideration of this inconvenience that might befall the strangers, that they would not have ready recovery of their money, allowed them to compare in this process, and to repeat their reasons of reduction, that if they should prevail they might have access to call for the money contained in these bonds; but their procurators refusing to compare or insist in the reduction, the LORDS found that the arrestment against the cedent had no effect against the assignee, whose assignation was intimated before the arrestment, albeit the assignation was granted *pendente processu*, seeing the process is determined by a decret *in foro*; but found that allegiance relevant, that the charge was to the behoof of the cedent, or without an cause onerous, to suspend the letters, ay and while the cedent loosed the arrestment, and found caution.

*Stair, v. 2. p. 316.*

1678. July 17.

LORD PITMEDDEN *against* PATERSONS.

ARRESTMENT will not be sustained, laid on before the term of payment of the debt which is the foundation of the arrestment, unless in security, where the debtor is *vergens ad inopiam*.

*Fol. Dic. v. 1. p. 539. Stair.*

No 48.

\*\*\* This case is No 160. p. 813., *voce* ARRESTMENT.

See a similar decision, 27th February 1728, Meres against York Buildings Company, No 145. p. 800. *voce* ARRESTMENT.

1697. June 30.

RUTHVENS and MURRAY *against* TEMPLE.

No 49.  
A decree of  
the Court of  
Session being  
appealed, ar-  
restment on  
the depend-  
ence of the  
appeal was  
reduced.

MERSINGTON reported Mrs Clara and Patricia Ruthvens, and Murray of Spot, husband to the said Clara, against Mrs Martha Temple, relict of Edward Ruthven, their brother, for repetition of L. 1000 Sterling, she got from Lord David Hay, son to the Marquis of Tweeddale, for demitting his place as Cornet of the King's guards in 1683. THE LORDS, before answer, had appointed the said Lord David, with Sir Stephen Fox, and Francis Littleton, communiers at that transaction, to be examined; and the act extracted burdened Madam Temple with reporting the commission containing their depositions; and the term being circumduced against her, she reclaimed by a petition, that it was only the extractor's error in putting in the defender's name instead of the pursuers, and that the signed interlocutor did not express who should report the commission; but common reason and *evidentia facti* required that it should be the pursuer, who proponed the allegiance, and was to reap the benefit of it when proved, that ought to be burdened with it, and not force her to prove their libel against herself. *Answered*, They opposed the act extracted by herself, and so homologated and acquiesced in; and it cannot be supposed that Spot, a stranger, can compel these gentlemen to appear before the Commissioners, and depone; which is easy for her so do, they being her friends and relations. THE LORDS found the imposing the burden of reporting the Commission on her was a mistake in extracting the act; but in regard of the dubiety of the case, they renewed and prorogated the commission to a farther day, but burdened Spot, the pursuer, with reporting thereof.

1699. July 5.—THE LORDS having determined the declarator pursued by Clara and Patricia Ruthvens and Murray of Spot, against Mrs Martha Temple, (*Vid.* 30th June 1697.) that the L. 1000 Sterling paid by Lord David Hay, for Edward Ruthven's place in the King's guards was the said Edward's money, and so must compensate Mrs Martha's jointure; and having assoilzied her from the declarator, the Laird of Spot this day gave in his appeal and protestation for remeid of law to the Parliament, against the LORDS' interlocutor, having given in a reclaiming bill, which was refused.

1699. July 22.—Mrs Martha Temple prevailing against Ruthven's and Spot's declarator, mentioned 5th current; and they having protested for remeid of