

. Dirleton's report of this case is No 66. p. 863., *vide* ASSIGNATION.

No 306.

. For the same reason, as in the above case, in a special declarator of escheat the rebel's oath was not sustained against the donatar, to prove that the bond pursued for was paid before denunciation, 10th February 1663, Montgomery against Montgomery, No 5. p. 3615., *vide* ESCHEAT.

1680. February 10. MORTON against GILCHRIST.

WILLIAM ANCRUM and James Grieve having bought a parcel of iron from Arthur Udney; James Gilchrist arrests the price, and obtains a decret for making forthcoming, in satisfaction of a debt due by Udney to him, and obtains payment thereupon. Andrew Morton pursues the same persons for payment to him of the price, because the iron belonged to him, and Udney was only his factor, and for proving thereof, hath produced an assignation from Udney to the price, bearing expressly, That it did belong to Morton, and that he sold it as a factor, with a letter to the same purpose. It was *alleged* for Ancrum and Grieve, absolutor, because they had made payment *bona fide* to Gilchrist, before this pursuit; but seeing Gilchrist compeared, the Lords considered the competition between him and Morton. It was *alleged* for Gilchrist, That Udney's acknowledging the property to belong to Morton, cannot be respected, because Udney before that time was broken, at least Gilchrist had used diligence against him by horning.

No 307.
Found, that the seller of goods having become bankrupt, his evidence could not be received to prefer one party to another.

THE LORDS found the allegiance relevant for Morton, That the property of the iron belonged to him, and that Udney was only his factor, and found the same proved by Udney's acknowledgement in his assignation or letter, unless he was bankrupt, or incapacitated by diligence before the same, in which case they found the property of the iron to belong to Morton probable *prout de jure*.

Fol. Dic. v. 2. p. 237. Stair, v. 2. p. 754.

1683. March. COCKBURN against TURNBULL.

WALTER TURNBULL surgeon merchant, having become cautioner to Mrs Reidman for Janet Watt, her taverner, by which he was obliged to hold count and pay whatsoever wine or other liquors should be vented by the said Janet Watt, after just count and reckoning made betwixt Mrs Reidman and the said Walter; and Mrs Reidman having counted with the said Janet Watt by herself, and the balance being assigned to John Cockburn; who having pursued Walter Turnbull, and the Representatives of Janet Watt for payment; and it

No 308.
Where a party had become cautioner for a servant in a tavern, for any balance of accounts to be settled by the cautioner and the taverner.

No 308.
keeper,—the
accounts hav-
ing been set-
tled with the
servant her-
self, the cau-
tioner was
found net-
withstanding
liable.

being proved, that the count was fitted betwixt Mrs Reidman and Janet Watt, the said Janet being present ;—the LORDS found the said Walter Turnbull liable for the balance of the account, albeit he was not present when the account was settled, notwithstanding the bond bore, that he should be only liable for what should be found due after just count and reckoning made betwixt Mrs Reidman and the said Walter.

Fol. Dic. v. 2. p. 237. Sir P. Home, MS. No 454.

No 309.

1686. December 17. MALVENIUS against BAILLIE.

A CAUTIONER for an apprentice being charged for an alleged fornication committed by the apprentice, the oath of the apprentice was found not probative against him.

Fol. Dic. v. 2. p. 237. Fouut.

* * * This case is No 1. p. 583, *voce* APPRENTICE.

1711. February 20.

ANDREW HORN, Coalgrieve to the Dutchess of Argyle, against LORD EDWARD MURRAY and his Lady.

No 310.

In a process
of furthcom-
ing, payment
found rele-
vant to be
proved by
the debtor's
oath, in pre-
judice of the
arrestor.

IN a process of forthcoming at the instance of Andrew Horn, who, as creditor to Mr David Seton brewer in the Canongate, had arrested, in the hands of Lord Edward Murray and his Lady, money due by them to Mr David for ale furnished to their family ; the pursuer offered to prove the furnishing of the ale and price thereof within the years of prescription by witnesses, and the defenders offered to prove payment by Mr David's oath.

THE LORDS found the payment relevant to be proved by the oath of Mr David the brewer and furnisher, in prejudice of the arrestor ; albeit it was alleged for the arrestor, that he being a legal assignee, Mr David Seton's oath could not make against him, more than a cedent's oath could prejudice an onerous assignee ; in respect an arrestment, being but an incomplete diligence, doth not denude the person whose debt is arrested, as an intimated assignation denudes the cedent ; seeing goods arrested may, notwithstanding the arrestment, be poinded at another creditor's instance.

Fol. Dic. v. 2. p. 236. Forbes, p. 502.

No 311.

Found in
conformity
with the
above.

1711. June 5. FORBES against FORBES' CREDITORS.

FORBES of Craigie having broke suddenly, Forbes of Ballogie, as one of his creditors, arrests in his debtors' hands, and pursues a furthcoming, wherein they having deponed, their oaths came this day to be advised ; and Craigie's