

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