

No 433. arrestment, produced only an extract of letters of horning and arrestment, with the principal executions of the arrestment, subscribed by the messenger.—THE LORDS found, that, albeit the extract would suffice for the horning, yet it was not enough to verify the arrestment.

Spottiswood, (ARRESTMENT.) p. 18.

1682. *January.*

WILLIAMSON *against* THREAPLAND.

No 434.

An extract of an inhibition out of the record sufficient to found a reduction *ex capite inhibitionis*; reserving to the defender to pursue improbation.

JOHN WILLIAMSON, Sheriff-clerk of Perth, being assigned by Agnes Lamb, relict of James Dycks, to a bond of 2700 merks, granted by Patrick Anderson of Tulliallan to her and her husband in liferent, and the children in fee, whereupon there had been an inhibition served, pursues a reduction against Sir Patrick Threapland of the right made by Anderson to him of certain lands, *ex capite inhibitionis*. *Alleged* for the defender, That there could be no process upon the inhibition, because, it was only an extract under the pursuer's own hand, which could not make faith for him, unless the principal were produced; as also, albeit it were produced, yet it could not be a ground of reduction of the defender's right; because, albeit the pursuer be assigned to the debt, yet he is not expressly assigned to the inhibition. *Answered*, That the extract under the pursuer's own hand was sufficient, he having extracted the same *ex officio*, as being Clerk; and if he has taken out a wrong extract, he is liable for malversation. And farther to instruct that it is a true extract, there is another extract produced, under the Clerk-depute's hand; and albeit the pursuer be not assigned to it *per expressum*, yet he being assigned to the debt, and to the bond, and to all right, title, and interest, that the cedent had, it will carry a right to the inhibition, and all legal diligence that has followed upon the bond, as being accessory thereto.—THE LORDS sustained the pursuer's title, although his assignation was only to the liferent, and did neither assign the inhibition *per expressum*, nor contained these general words, with all that has followed thereupon: And found the extract of the inhibition out of the books of the sheriffdom of Perth, under the hand of the pursuer's own depute, to be sufficient in the action of reduction; reserving improbation to the defender, as accords.

Fol. Dic. v. 2. p. 250. Sir P. Home, MS. v. 1. No 80.

1693. *February 21.* WALLACE *against* EARL OF DUNDONALD.

No 435.

WALLACE of Neilstownside against the Earl of Dundonald, and the Tenants of Glen.—THE LORDS having read the act of Parliament in 1617, they found an extract, out of the Register of Reversions, is declared to make as much faith, (except in the case of improbation and falsehood,) as out of the Register.

of Sasines; though the parties get back their principal evidents again: And, therefore, they not only found this extract a sufficient title *ad inchoandam litem* as of before, but also decerned in the pointing of the ground. But if Dundonald raise an improbation, he will force them either to produce the principal bond, (which is the warrant of the sasine,) or else obtain certification against it.

No 435.

Fol. Dic. v. 2. p. 250. Fountainball, v. 1. p. 563.

DIVISION IV.

Private Deed, how far probative.

S E C T. I.

If probative of its Onerous Cause against Creditors and Donatars of Escheat.

1622. February 13. YOUNG against DENNISTON.

No 436.

THE LORDS found, That a disposition made by Alexander Aikenhead to Alexander Denniston, his brother-in-law, being quarrelled by Mr George Young's daughter, a true creditor, was null, unless Alexander Denniston would allege and prove just and true causes of making the assignation to him.

Fol. Dic. v. 2. p. 252. Haddington, MS. No 2598.

*** Durie reports this case :

1622. February 12.—IN an action betwixt Alexander Denniston and ——— Young, daughter to umquhile Mr George Young, it being controverted, if an allegiance, founded upon the act of Sederunt made against dispositions made by bankrupts, and ratified in Parliament, within the compass whereof Young alleged that Denniston's right fell, seeing it was an assignation made to him by a confident and conjunct person, without any just, true, or necessary cause