

No 312. George M'Kenzie, in his Observations on the act against bankrupts 1621, says, such decreets may be reduced, if collusion appears, or competent defences be omitted; which is plainly Liddel's case; for he omitted to give in a renunciation as heir to his uncle, which would have saved the adjudging his own estate; and then Drumkilbo's adjudication would have been infallibly preferable, and Kilry could never have competed with him. And he cites a case for it betwixt Haliburton, Wat and Morison. THE LORDS considered, that this case had oft occurred, where debts were constituted against parties inhibited, by referring the same to their oaths, and yet they were never quarrelled *ex capite inhibitionis*, which silence and acquiescence seemed to be an evidence that our lawyers never thought such constitutions of debts fell under these inhibitions; and therefore, by plurality, found debts so constituted could not be quarrelled, though their debtor stood inhibited before. Which was looked upon as the first decision this case had met with.

Fountainball, v. 2. p. 658.

1713. December 2.

ALEXANDER NAIRN of Drumkilbo *against* JAMES OGILVIE, Bailie depute of the Regality of Cupar in Angus.

No 313.

JAMES OGILVIE having commenced a reduction and declarator of extinction against Mr John Ogilvie his brother, when out of the kingdom, of two bonds granted by the former to the latter, upon a ground of compensation referred to his oath; Alexander Nairn, Mr John Ogilvie's creditor, did thereafter, before any act was extracted, arrest in James Ogilvie's hand and pursued a furthcoming against him as debtor to Mr John by those bonds.

THE LORDS found it relevant for James Ogilvie to prove by Mr John's oath, that he was debtor to James to extinguish the debt due by him to Mr John, the matter being rendered litigious before the arrestment, with this quality, that James should report Mr John's oath; for Mr John not being within the kingdom, and he and his brother conjunct persons betwixt whom there might be collusion, the LORDS would not allow James to prove against his brother by holding him as confest to the prejudice of the arrester.

Fol. Dic. v. 2. p. 237. Forbes, MS. p. 7.

No 314.
In a process
of forthcom-
ing, the pur-
suer produced

1725. November 25.

Sir WILLIAM NAIRN of Dunsinnan *against* Captain LAURENCE DRUMMOND.

SIR WILLIAM NAIRN, as creditor to Mr Thomas Crichton of Tullifergus, then a bankrupt, used arrestment in the hands of Captain Laurence Drummond, and