

\* 1. i. <sup>his</sup> where a Father in his contract of marriage settled his lands upon the son and his wife in joint lives and life rent and the heirs male to be procreated of the marriage; and the eldest son of that marriage being a hypochondriac happening to be a weak foolish & extravagant person his Father thought him and disposed the estate to his second son of the same marriage. The eldest son sought redress of that disposition upon this Motion that the Father had no power to alter the grandfather's settlement. To which it was Answered, That tho' it were allowed that the Father could not discontinue the marriage settlement by a merely jealous or arbitrary deed, he might do it by a rational deed and so had a discretionary power of settling the estate upon a second son where the eldest is undesigning. The Lords found that in this circumstance of case, the Father might dispose of the estate to either of the sons of the same marriage; and therefore assented to the production in July 1724 Douglas contra Douglas.

\* 1. i. The pursuer in a Forthcoming having offered to prove scripto by two Bonds the Debt due to his doctor by the person in whose hand he had arrested. It was pleaded for the Defendant, that he offered to instruct by the oath of the pursuer's doctor that these Bonds were granted upon a number of pecunies, and that the money was not actually advanced by him. <sup>which</sup> ~~the~~ <sup>oath</sup> ~~was~~ <sup>must be</sup> ~~proved~~ <sup>proved</sup> as proof against the Arrestor, seeing if he acknowledged that he never paid money for the Bonds he is virtually swearing to his own guilt, it being his Interest that the Arrestor prevail in the forthcoming. It was Answered for the pursuer, that the oath of guilt being binding in consequence of a tacit contract can have effect only between the contractors, and hath no Influence upon the Diligence or Rights of third parties as an Arrestor is. 2<sup>d</sup> The Arrestor's oath being bankrupt his oath cannot militate against his Arrestor: for he being sworn against the Arrestor's Justice by Infidelity and a Desert of Justice Bonorum, it may be said, that to him whether the Arrestor or Doctor in the forthcoming prevail, and seeing he might collude with the Doctor in the forthcoming for some share of the gain to disappoint the effect of the Arrestor's Diligence. Besides, the Defendant suffered the Bonds to continue in force in the hands of the Arrestor's doctor, which he might not have done had he not got the money.

\* The Lords found that the Exceptions of not numerate money <sup>may</sup> be proved by the Doctor's oath upon oathment. But in regard the Defendant allowed his Bonds to lay so long in the hands of the Arrestor's doctor, and that the said Doctor is adjudged bankrupt it could not be now proved by his oath 23 November 1725 Aitken contra Drummond.

\* A Debt within the Term of payment is not void being arrested and a forthcoming though pursued before the Term, Tho' the Lords Decree in the forthcoming in execution at his creditors Instance after the Term 21 February 1724 Brown contra Johnston.