

ments as done *ex vi et metu*, when he was under caption, and that this obligation was not the ground of the caption, but only the rent 1680;—the Lords reduced the disposition as to these obligations, *ex capite vis et metus*.

Page 54, No. 228.

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1681. *December.* FLOCKART *against* LORD ROLLO.

MY Lord Rollo, being pursued as vitious intromittor with his father's robes and best horse, at the riding of the Parliament;—he Alleged, That the goods intromitted with fell under escheat by his father's dying at the horning, and the said escheat was gifted, and declared, before commencing of the cause; which ought to purge the vitiosity, though the gift was posterior to the defender's intromission, and he derived no right from the donator. The Lords sustained the allegiance, as relevant to purge the passive title.

Page 6, No. 26.

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1681. *December.* ————— *against* DR HAY, and CAMPBELL *against* CAMPBELL.

FOUND, That, in the case of three brothers, the second and not the eldest succeeds both as heir of line and conquest.

Page 7, No. 32.

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1681. *December.* JOHN GEDDY *against* PATRICK TELFER.

AN adjudication against one Geddy, that was out of the kingdom, being quarrelled as null, for that the citation in the summons was not given upon sixty days at the market-cross of Edinburgh and pier of Leith;—it was Alleged for the adjudger, That the debtor had ratified the decret of adjudication, and so had passed from an informality or nullity therein. Answered, The adjudger gave a back-bond, the time of the said ratification, to allow all things to the debtor that could be acclaimed by law, reason, or equity, which took off the total effect of the ratification. 1. The Lords sustained the ratification to make the adjudication subsist; but that the effect of the said ratification was elided and taken off by the back-bond. 2*do.* The said adjudication was alleged to be null, for that it adjudged for a fifth part more than was due, which was *pluris petitio*. Answered, The adjudger had libelled a fifth part more, not knowing but the debtor might have appeared and produced a progress; in which case, the Act of Parliament allows to adjudge for an additional fifth part; and the clerks, at the beginning, before the import of the Act was well understood, used to extract for the superplus fifth part, even in absence. 2. The Lords, in respect of the clerk's mistake, did not find the adjudication simply null, but restricted it to the principal annual-rent and composition to the superior, without allowing