

moned of new, and a new process raised : for albeit the Lords, before interlocutor, will, *ex gratia*, suffer pursuers to mend their executions, and abide by the verity thereof, yet that is but *ex gratia*. And the ancient custom was, when the defender excepted against the executions, if they were defective, he was ever free, *ab instantia*, and not obliged to answer till a new process were raised : much more in this case, where, by interlocutor, the defence was sustained, upon the defect of the execution then produced.

It was ANSWERED, That defects in executions, albeit they may be strictly adhered to by the Lords, yet, *ex nobili officio*, they may allow some alterations ; and there can be none more favourable than this,—the addition of the defender's designation, *ubi constat de persona*. And the Lords' interlocutor finds only no process upon the execution produced ; but doth not assoilyie *ab instantia* ; and, though it did, there is nothing extracted.

The Lords sustained process upon this execution.

*Vol. II, Page 815.*

1681. *January 7.* OGILVIE of LOGIE *against* JAMES HAMILTON.

OGILVIE of Logie having, by contract, disposed a quantity of victual to James Hamilton, he charges for the price.

JAMES SUSPENDS, upon this reason,—That his receipts of the victual bear expressly, that every boll wanted eleven pounds of weight ; whereof he must have abatement, conform to the Act of Council, ordering all bargains between merchants to be by weight.

It was answered, That this bargain was before the Act of Council, although the delivery was after ; and, therefore, the delivery behoved to be regulated according to measure, as the bargain was made, and not according to weight.

Which the Lords found relevant.

*Vol. II, Page 829.*

1681. *January 11.* MR ROBERT LUNDIE *against* The MARQUIS of DOWGLASS.

MR Robert Lundie, as assignee, by Janet Jack, to a bond of 50,000 merks, granted to her by the Marquis of Dowglass, charges the Marquis for payment ; who SUSPENDS, and raises reduction upon these reasons, *1mo.* That albeit the bond bear borrowed money, yet it is notour that Janet Jack was a person of no fortune, but in the Marquis's family ; and was never able to lend any sum : and, therefore, unless she can instruct a just cause, the bond must be declared null, and *sine causa*. *2do.* If need be, it is offered to be proven that the bond was granted *ob turpem causam, scilicet stuprum* ; which is reprobated in law. *Stio.* This bond is discharged ; and the discharge is produced long before the assignation.

The pursuer ANSWERED, That all promises and obligations are, with us, effectual ; and, if there be no cause onerous, it is always interpreted gratuitous and donative. To the second, the law says, *l. 4, § 3, ff. De Conditione ob tur-*