

nation, *quoad nomina debitorum*, not being intimated in the defunct's lifetime, the sums therein were *in bonis defuncti*, and confirmable for the security of the debtor's making payment; but that the executor was liable for them to the assignee. And many were of opinion, that the assignee would be preferred to other creditors doing diligence against the executor, unless they had affected the subject by some preferable diligence. But the creditors were not there competing.

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1683. December. LORIMER *against* LUMISDEAN.

AN act being quarrelled as null: for that, 1. The libel was not proven; 2. A defence of compensation was proponed, which had received no answer;—Answered, The defender not having denied the libel, it was understood as acknowledged; 2. Where the Lords give answer to one defence, it is presumed the rest are repelled. Again, the defender did so far homologate the said Act, that he appeared before the commissioner appointed by the Lords, in pursuance, to examine witnesses, and gave in interrogatories; and the cause is advised now four years ago since the Act, without any reclaiming till of late. The Lords would not reduce or ratify the Act, in respect of the circumstances and state of the cause; but they delayed extracting till February, that the defender might pursue for that debt upon which the compensation was founded.

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1683. December 12. ————— *against* —————.

THE obtainer of a decret of suspension having extracted the bond of caution, and charged the cautioner, who suspended and proponed improbation against the bond, and craved the pursuer to abide by it;—it was alleged for the charger, That the bond of cautionary not being to him, but given in to the clerk of the bills, he could only abide by the extract he had gotten out of the clerk's office. The Lords, having considered that bonds of cautionary are sometimes forged, and that the suspender behoved to be called, they decerned against the cautioner: superseding extract till the latter end of January; that, in the mean time, the cautioner might raise a summons of improbation, and insist therein, which they would summarily take in in this process, and would ordain the clerk of the bills to satisfy the production, by giving in the principal bond.

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About 1683. REID *against* BARNER'S HEIR.

IN a pursuit, at the instance of Jean Reid, against the heir of one Barner her husband, for a jointure provided to her by her said husband, in contemplation