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.

Page 125, No. 458.

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 compeared 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.

Page 256, No. 909.

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

THE obtainer of a decreet 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.

Page 150, No. 542.

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

of 2000 merks of portion contracted by her;—it was alleged for the defender, That the pursuer *habuit intus*, seeing the portion was not paid and she had no discharge thereof. Answered, Wives do not always take discharges of their tocher, as third parties do, when they are obliged for them; and the husband ought to have left a discharge: And the marriage having subsisted for the space of seven or eight years, the tocher ought to be presumed satisfied, as the Lords found in the case of David Dick's wife against ——— her first husband's heir. The Lords sustained the answer, and the defender having thereafter referred the verity of this allegeance to the relict's oath, the Lords, in respect she was now clothed with a second husband, ordained her to depone, only to affect herself in case she survived the husband.

Page 86, No. 350.

1684. *January.* ROBERT HANDISIDE *against* WILLIAMSON.

IN a competition betwixt an arrester and the possessor of a prior precept, drawn by the common debtor, and accepted by the person in whose hands the money was arrested;—it was alleged for the arrester, That the precept, as gratuitously given after the arrester's debt, was quarrellable upon the Act of Parliament 1621; and the onerous cause being referred to the possessor's oath, he deponed that himself was not creditor to the drawer, but his brother was. The arrester objected against his oath, that the quality is extrinsic, and it must be otherwise proven that the brother was creditor to the drawer; and, *esto* that were proven, the arrester's diligence should be preferred, unless it were made appear, *scripto*, before the arrestment, or by the arrester's oath, that the precept was given for the brother's debt. It were again a dangerous preparative to allow persons, whose rights are quarrelled as wanting an onerous cause, to impute them to the payment of a creditor who had done no diligence, and so to disappoint the diligence of another creditor. The Lords, before answer, ordained the debtor, drawer of the precept, and the possessor's brother, to be examined if the precept was truly granted at the time for the behoof of the brother; who had sold some goods to the drawer for ready money; and, as was alleged, had verbally ordered his brother to receive his money or the precept.

Page 15, No. 81, [1st.]

1684. *January.* MARY BRUCE *against* SIR PATRICK HEPBURN.

MARY Bruce, relict of John M'Pherson, having, after his decease, adjudged certain sums of money belonging to him, for satisfaction of bygone and future annuities during her lifetime, of £10,000, which the defunct was obliged, in his contract of marriage, to employ upon land or annual-rent, to him or her, the longest liver; and had not performed it;—this adjudication was quarrelled by Patrick Hepburn, another adjudger, within year and day, upon this ground, That she had not liquidated the terms to come to a certain sum at the rate of so many years; which is a nullity; because, 1. A creditor can no more adjudge or apprise for future annuities, than he can poind them; 2. There is