

interlocutor, unless the donator would positively offer to prove that the disposition was signed *in lecto*.—*January 1685, partibus ut supra. Vide No. 132, [Kolstoun against Weir, November 1682.]*

*Page 181, No. 653.*

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1684. *November 22.* ————— *against CUNINGHAME.*

A TUTOR-TESTAMENTAR, who thereafter was donator to the pupil's marriage, having signed a discharge, with the pupil, of rents to a tenant, which was obtruded against him as a qualification of his acceptance of the tutory;—Alleged for the defender, That the discharge, not being holograph, was null *quoad* him, for want of writer's name and witnesses. Answered, It was a discharge to a tenant that requires not the solemnity of witnesses. Replied, Though such a discharge might be sufficient for the tenant's exoneration, it is not sufficient to make the defender liable as tutor, he not being therein designed *tutor*. The Lords, in respect of the other papers and presumptions of acceptance mentioned, No. 982, [————— against Cunningham, 12th November 1684,] sustained the discharge as a probative writ, the defender not denying the subscription.

*Page 224, No. 793.*

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1684. *December.* SCOT *against COCKBURN.*

ONE Scot, who was about to go to Holland, having got a bill from one George Cockburn, upon a tailor there, dated in September, and payable on six days' sight; which bill being protested in November thereafter, for not-acceptance, Scot pursued Cockburn for another debt, who proponed compensation upon the bill;—Alleged for the defender, That the bill was protested. Answered, The suffering of the bill to be protested was occasioned through the pursuer's fault, in his delaying to present the same *debito tempore*. Replied, The pursuer being to carry the bill along with him from Scotland, his necessary occasion detained him in Scotland some time after the date; 2. *Esto* the pursuer had been *in mora* of presenting the bill, yet he could not be answerable for the sum therein contained, unless the defender make it appear that he had effects in the tailor's hands; for otherwise he hath no prejudice by the delay or the tailor's breaking. The Lords sustained both the replies relevant; and, the defender producing a letter from the bankrupt acknowledging his receipt of goods from him, they sustained compensation for value, in case it did appear that the pursuer was *in mora* of presenting the bill.

*Page 36, No. 162.*

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1684. *December.* BUTTER *against BUTTER.*

JAMES Butter having taken a bond of borrowed money, in the name of his nephew, without delivering the bond, or reserving any liferent to himself, and