

No 107.

author's death, *vel causam necis dedit*, or when done by another, and did not prosecute the same, he lost the inheritance; for *nemo debet lucrari ex proprio delicto, et iniquum est ex scelere ditari, cum non debent lucrum consequi ex eo quod pœnam potius meretur*.—*Answered*, The accusation is false and calumnious, and if any were unnatural to her, it was her own friends; and it is neither extraordinary nor unusual for a woman to die in childbed; but when they attack him in a criminal process, he will clear and vindicate his innocence.—But the LORDS thought these recriminations wholly extraneous to the present question, and so waved them at this time. *Fol. Dic. v. 1. p. 165. Fountainball, v. 2. p. 603.*

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1736. February 18. M'LARENS *against* BISSET.

No 108.

A DECREE had been obtained before the Bailie of the Regality of Balhousie, against James Bisset, at the instance of the representatives of Edward M'Laren, deceased, for the amount of a bill.

Bisset had counter claims against the deceased, who had died insolvent; and in an advocacy *pleaded*, That they might still be proponed in compensation, on account of the bankruptcy of M'Laren, and that the decree was only of a regality, which ought not to preclude compensation.

Effect was given to the decree, only upon condition of the puruer finding caution to be law-biding for the counter claims. *See APPENDIX.*

*Fol. Dic. v. 1. p. 165. Session Papers in Advocates' Library.*

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1739. July 20. ANDERSON *against* SCHAW.

No 109.

Found in conformity with No 105. p. 2642.

COMPENSATION not admitted after decree, though this ground of compensation was not in the suspender's person at the time of obtaining the decree, but acquired by him posterior thereto, in respect of the generality of the terms of the statute.

The like was again found, 9th December 1742, William Hogg merchant in Edinburgh, and the other creditors of Robert Paterson merchant in Saltcoats, against Patrick M'Calla merchant in Saltcoats, (*infra*.)

*Fol. Dic. v. 1. p. 165. Kilkerran, (COMPENSATION.) No 2. p. 134.*

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1742. December 9.

CREDITORS of ROBERT PATERSON *against* PATRICK M'AULAY.

No 110.

Compensation is not competent

ROBERT PATERTSON having obtained a decret against M'Aulay for L. 400 Scots, some of his creditors arrested the same in M'Aulay's hands, who, in or-