they were declared lawful prize, being presumable they were caped. Yet the plurality of the Lords allowed this article to him, seeing he could not be said to be *lucratus*, except the price paid out by him were first deduced. The witnesses in this cause were the shipmen who were aboard the time of the robbery.

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1680. *January* 31. The Earl of Southesk *against* Boswell.

It was thought, though a reason of suspension ought to be instantly verified, yet a reply or duply in a suspension (which is also *pars libelli,*) needs not, since it may be emergent, and the proponer cannot come *paratus et instructus* to verify it: which is also Stair's opinion, in his Form of Process.

Yet, this point being reported on the 5th of Feb. 1680, the Lords found a reply upon re-compensation ought to be verified instantly, being in a suspension which was turned to a count and reckoning. This many thought strange; yet compensations should be instantly verified, especially in suspensions.

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1680. *January* 31. Hamilton of Bangour *against* Alexander Hamilton.

In the action betwixt Hamilton of Bangour and Mr Alexander Hamilton, upon the Lady's liferent, a bill having been given in against Mr William Hamilton, advocate, for exhibiting summarily some writs in his hands, because he was a member of the house; the Lords, *maxime refragante Præside*, refused it, because he had not these papers consigned in his hands as an advocate, but as uncle and tutor to the children, and here was to be considered *tanquam quilibet.*

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1680. *January* 31. Duncan Forbes *against* Edgar of Weatherly.

John Edgar of Weatherly grants a bond to his brother, Mr William, for 500 merks *per annum*, and, in case he married, he adds 300 merks more,—in all, 800 merks; and, if he have children, then John obliges himself to pay him 6000 merks; and, if he died without leaving any children behind him, then he is to pay him 4000 merks only. Mr William assigns this bond to Nicol Edgar, another brother, and dies without ever being married, and so without children. Mr Duncan, having married Nicol's daughter, craves the 4000 merks provided *in eum casum* that Mr William should have no children.

Alleged,—The clause is only to be understood if he had been married, and then had deceased without bairns: but *ita est*, he was never married, and so the condition never existed.

Answered,—The clause is general, and is opponed, and comprehends *casum*