

creditors having posterior rights, or to personal creditors, who, upon a diligence, would come in within year and day. In this process, it was also found, that creditors having real rights, though they got but payment, should assign with warrandice from fact and deed, and that it was not enough for them to renounce; and that the expense of the roup and process should come off the creditors who got payment, *pro rata* of the payment.

*Page 262, No. 935.*

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1688. *February 2.* PATRICK TELFER *against* SMITH.

THE Lords granted a warrant to the creditors of one Smith, a London factor, then at Edinburgh, to secure him there, till he should find caution both *judicio sisti* to all the diets of process, and *judicatum solvi*, upon a representation by the creditors that he was returning to London; which seems hard; but, the party having represented that the warrant was calumniously impetrated,—the Lords stopped it.

*Page 56, No. 233.*

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1688. *February 2.* LADY BOOGHALL *against* The DUCHESS of LAUDERDALE.

A LEGACY, left by the Lady Lauderdale to the Lady Booghall, in a testament wrote by the legatar, not sustained unless otherwise adminiculated; and Lord Shomberg, one of the witnesses, only, was alive, Mr Cloud being dead.

*Page 131, No. 479.*

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1688. *February 18.* The LAIRD of DECKMONT *against* COLONEL BORTHWICK.

IN a pursuit, at the instance of one deriving right from the deceased Hamilton of Deckmont, against Colonel Borthwick, for payment of some bonds due by the Colonel, and assigned to Deckmont, his father-in-law; the defender produced Deckmont's missive letter, bearing, that the defender had left 5000 merks with him for paying these bonds. Alleged for the pursuer, That the subscription of the missive was very suspicious; and the missive was also null for not being holograph, and wanting witnesses. The Lords, upon comparing Deckmont's subscription of the letter with his other true subscriptions, found it very different in the shape of the letters; and found the missive not probative for want of witnesses.

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1688. *February 18.* DECKMONT *against* COLONEL BORTHWICK.

THE Lords sustained a defence of nullity against a missive not holograph, re-