

should have no expenses of his decret, if he put the present pursuer to take out a new extract for satisfying the production.

*Page 150, No. 539.*

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1683. *March.* BAILIE SINCLAIR *against* JOHN WILLIAMSON.

ONE cocquet found sufficient for the whole loading of a ship, and that merchants needed not take particular cocquets for their parcels.

*Page 194, No. 685.*

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1683. *March.* JOLLY *against* PATERSON.

IT being alleged against an instrument of consignment, That the order was null: For that, 1. The instrument did not bear that a procuratory was produced or shown;—*Laird of Bass against Wachops, 13th November 1622: Nor, 2. That the money was numerata, but only, that there was a bag of money produced, which, by ocular inspection, contained the 2300 merks: 3. It was null for not bearing the expenses were consigned. Answered, There was no occasion to produce a procuratory, the creditor being absent; and, de facto, there was a procuratory, which is now produced. 2. It was in vain to tell the money in the church when the party was absent: but, immediately thereafter, it was numerate, and consigned in the hands of the dean of guild of Edinburgh, as appears by the instrument. And 3. The sum to be consigned being only 2000 merks, the odd 300 merks was consigned in lieu of expenses; and, if the expense be more, the superplus is offered at the bar. The Lords sustained the order.*

*Page 242, No. 848.*

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1683. *March.* STRAITON OF LITHRISK *against* THOMAS M'GILL.

THE witnesses adduced in a criminal process, for mutilation, before the justices, having, after compearance and answering to their names, been seduced to go away, whereby the dittay being remitted to an assize, the pannel was acquitted for want of probation;—the party mutilated raised a process, before the Session, for damage and interest, against the enticer of the witnesses to withdraw. Alleged for the defender, That such a process was a novelty, seeing *non constat* that the witnesses would have deponed that the mutilation was committed by the pannel. The Lords sustained process for damage, without putting the pursuer to prove what the witnesses would have deponed.

*Page 255, No. 904.*

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