1685. *March.* The COLLEGE of ST ANDREW'S *against* RAMSAYS and their HUSBANDS.

ONE Ramsay having alienated his estate, by way of mortification, to the College of St Andrew's, who pursued his heirs to denude themselves of it;—Alleged for the defender, That the deed was never delivered, nor contained a clause dispensing with the not delivery, nor yet reserved a power to alter and innovate; but was found lying by the defunct, at least in the hands of a schoolmaster, to whom he had given it to write two other duplicates; and, by a provision in the mortification, the defunct and his heirs were to retain one double, and the other doubles were not subscribed. Answered for the pursuer, 1. It was rational for the mortifier, who had reserved his own life-rent, to retain the deed, especially he being patron of the mortification; 2. Ramsay wrote a letter to the College, declaring, *per verba de presenti*, that he had mortified the lands to the College, for educating some bursars; and, upon that insinuation, recommended a bursar to the College; which latter is equivalent to delivery; and the recommending of the bursar is an exercise of his right as patron of the mortification; and mortifications are favourable. The Lords, before answer to the debate, recommended to some of their number to settle the parties.

Page 28, No. 136.

1685. *March.* ALEXANDER BOTHWELL *against* MR GEORGE ROME.

JAMES Clerk having given a letter of credit on George Rome, factor in London, to advance to Bothwell £40, if he stood in need on't; Bothwell drew a bill on Clerk, payable to James Rome, George's brother; which bill being protested, and Bothwell pursued for not-payment, it was alleged for him, That the money given for the bill being truly employed for Clerk's use, whose apprentice the drawer had been, and George Rome being debtor to Clerk, the drawer ought to have compensation upon the debt due to Clerk. Answered, That compensation is only competent *inter eosdem;* and James, and not George Rome, is creditor in the bill, for an onerous cause; 2. Clerk's escheat is gifted. The Lords found, by the letter of advice sent with the bill, that the bill was for George Rome's behoof; and therefore found the defender's allegeance relevant to be proven, that James Clerk, who is now bankrupt, was creditor to George Rome, and that the money got by the credit was expended for goods to Clerk.

Page 36, No. 164.

1685. *March.* SKELMORLY *against* His BROTHER ARCHIBALD.

OLD Skermorly having given a bond of provision, to his second son, of 8000 merks, and thereafter paid him 2000 merks, and took his bond for the same as so much borrowed money; after his death the second son agreed to take from his eldest

brother 6000 merks, in place of the 8000 merks in his bond of provision, without any mention of the 2000 merks' bond: the young Laird being pursued for the 6000 merks, he proponed compensation on the 2000 merks' bond; and the pursuer having proven, by the defender's oath, that the restriction of the 8000 merks' bond of provision to 6000, was made without any payment of money, or onerous cause, on the defender's part;—the Lords repelled the compensation upon the 2000 merks' bond, in respect of the abatement of the sum in the bond of provision; because *debitor non præsumitur donare*, unless the defender would prove, by the pursuer's oath or writ, that the 2000 merks of abatement was gifted.

Page 45, No. 201.

1685. *March.* ROBERT BURNET, W. S. *against* M'LELLAN.

THE Lords found, That, to infer compensation *inter easdem personas*, it is not enough that the compenser had an assignation in his person before the other party's cedent was denuded by assignation, unless he could say that it was intimated before intimation of the other's assignation; for the cedent is not fully denuded without intimation.

It was debated in this cause, That infeftment having followed upon a bond of corroboration, compensation could not be founded on the debt corroborated, as not being *ejusdem qualitatis* with the other moveable sum craved to be compensed. Answered, The compensation is founded on the principal bond, whereon no infeftment was passed; and the principal debtor did not subscribe the bond of corroboration, so as the moveable quality of the first bond was not altered thereby. The Lords were clear to have sustained the sums compensable, notwithstanding the infeftment following upon such a corroboration; but the cause was determined upon the first point.

Page 63, No. 263.

1685. *March.* SIR ROBERT BAIRD *against* BARRAM.

A COMPRISING found simply null, for that the lands were denounced at the wrong cross. Here it was doubtful where the lands lay. *Vide* No. 299, [Calderwood against Frank, January 1684; Dict. 3728.]

Page 76, No. 313.

1685. *March.* The EARL of NORTHESK *against* SIR PATRICK HEPBURN.

IN a competition between Sir Patrick Hepburn, who adjudged, without taking infeftment, Dougal M'Pherson's adjudication of some lands, whereupon no infeftment had followed, and my Lord Northesk, who two years after also adjudged from Dougal, and took infeftment;—Alleged for Sir Patrick, That an adjudication without infeftment, being transmissible by assignation, an adjudica-