

pointed the ground for the annual-rent of the whole 35,000 merks: The debtor proposed compensation *quoad* the annual-rent of the sum advanced, and of that for which he was cautioner for the creditor. The Lords found the real right was not compensable to the prejudice of the liferenter; for, as the husband could not have disposed the land but with the burden of the liferent, neither could he indirectly extinguish it by compensation.

*Page 59, No. 252.*

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1682. *January.* VISCOUNT of STORMOUNT *against* BLAIR of KINFARONS.

FOUND that the superior, being liable for the feu-duty of the erection to the exchequer, *viz.* £20; and several parts of the lands being feued out, holding of the king for payment of an undetermined proportion of the feu-duty;—if the superior pay the whole, he may have recourse against any part of the lands of erection for the whole, and leave that vassal to seek his relief off the rest *pro rata*.

*Page 264, No. 938.*

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1682. *January 6.* GRANT *against* GRANT.

ONE being pursued as heir to a person who had vitiously intromitted with the goods of the pursuer's debtor,—the Lords found, that action for vitious intromission, being penal, *non transit in hæredes*, where *lis* is not *contestata* with the intromittor in his lifetime; but found, that the pursuer might confirm himself executor-creditor to his debtor, and recover the goods intromitted with, if extant, or the value thereof, as accords.

*Page 6, No. 27.*

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1682. *January 13.* GORDON of SEATON *against* ALEXANDER SYMSON.

FACTORS for merchants found liable for annual-rent, from the time that the constituent's goods produced money.

*Page 194, No. 684.*

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1682. *January 16.* WILLIAM ORROK *against* ALEXANDER CHAPLAND.

AN apparent heir, pursued for his predecessor's debt, was not allowed to renounce till an apprising, led upon his own bond against the predecessor's estate, were purged; but the apprising, not being to the apparent heir's behoof, did not infer an universal passive title.

*Page 7, No. 28.*