

Cockburn's effects, for relief of cautionary he stood engaged in for James, having, after James's death, received a bargain of victual, that had been bought by the defunct conform to a contract, and transmitted to Leith by the seller, who knew not of the buyer's decease; the seller pursued Robert Burnet for the price. Alleged for the defender, That the disposition to him, for an onerous cause, comprehended this bargain, *emptio venditio* being perfected *solo consensu* without tradition; and the seller had no hypothec for the price. The Lords found Robert Burnet liable, if the victual was delivered after James's decease, seeing it could not be properly *in bonis* [of James] before delivery.

This decision seems somewhat irregular; but it was considered that the pursuer was a minister, and the defender was the defunct's son-in-law, and a writer to the signet, who had only a general disposition, and no particular assignment to the bargain; *Castlehill's Pratt. tit. Summons, No. 30.*

*Page 254, No. 899.*

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1682. *March.* KEITH of LUDQUHARNE *against* MULLIKEN.

FOUND that the seller of victual by sample was not obliged to make it simply good and sufficient, though he was obliged by the contract to that effect; but that it should be good and sufficient as the sample.

*Page 254, No. 901.*

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1682. *March 6.* The CHILDREN of JEAN ANDERSON; and GORDON, Factor; and JAMES RIDDEL; *against* ANDREW BRUCE.

A SUM in an heritable bond being payable to Andrew Bruce's three children, with a provision, in a distinct clause, that, in case they deceased without heirs, the sum should belong to Jean Anderson and her heirs; the Bruce's bairns being all dead, the said Jean Anderson having also died before them,—the Lords found, That the next person in the tailye behoved, in order to make a title to the bond, to be served heir to the last of the Bruces instituted, and not only cognosced as heir to Jean Anderson. *Vide* No. 959, Gordon against Bruce, March 1682.

*Page 39, No. 178.*

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1682. *March 8.* BOYD *against* LORD DALHOUSY.

AN adjudication on the late Act of Parliament found not to stop personal execution till the adjudger attained possession of the lands.

*Page 1, No. 3.*

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