

to exhibit all the debts she has already satisfied, with the discharges thereof, and to assign to the debts that are resting to the defunct ; which they ordain the heirs to accept of, for their relief *pro tanto*, in so far as the Lord Reporter shall find the same to be sufficient debts: and remit to the reporter to hear the parties, how far the said debts do exceed the said bonds so to be assigned ; and to decern the relict presently to relieve the heirs of the said superplus debts, either out of the moveables or out of the liferented lands. *Vol. I. Page 175.*

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1682. *February 21.* STEWART, Tutor of Innernytie, *against* Sir JOHN AYTON of that ilk.

IN the action pursued by Mr Stewart, tutor of Innernytie, and Sir John Ayton of that ilk, anent an assignation made by Innernytie to Sir John of a bond of four thousand merks, which the tutor of Innernytie alleged was never delivered, at least to have been revoked and altered, and taken back again, and that it was lying beside the defunct the time of his decease ; whereon the Lords had examined witnesses for both parties ; and their depositions coming this day to be advised, the Lords, after a long deliberation, before answer, recommended to Lord Forret and others to try and endeavour a settlement betwixt them. *Vol. I. Page 175.*

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1682. *February 22.* The late LORD ROLLO'S CREDITORS *against* The present LORD ROLLO.

SOME creditors pursuing Lord Rollo on the passive titles, for payment of his father's debt, and witnesses being adduced, they led some other creditors of his ; and it being objected against them, that they were to be suspected as interested :

The Lords allowed them, seeing they were not personal creditors merely, but wadsetters secured *aliunde* ; (though he, if once heir, then became liable to them in the requisition ;) but with this express declaration and provision, that their testimonies should not prove, when they came to insist against him for their own proper debts, and so it was not *in re propria*.

Yet it was *amicum testimonium illius qui consimilem forebat causam*, who might tyne and win in the cause ; and at this rate the creditors who now pursue may be adduced as witnesses to serve those creditors who now depone, in fixing a passive title on my Lord : and the decision was thought dangerous.

*Vol. I. Page 175.*

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1682. *February 22.* JAMES OGILVIE *against* GILBERT GOURLIE.

THE case, James Ogilvie, apothecary in Edinburgh, against Gilbert Gourlie being reported by Newton, the Lords, before answer, ordain Gilbert Gourlie to