

Glorat's witnesses, asserting his minority, that it looked like a premeditated tale which had been taught them, and wanted not suspicion of prevarication : and the Lords modified large expenses against Glorat. *Vol. I. Page 750.*

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1697. *January 5.* DRUMMOND OF RICARTOUN *against* SIR WILLIAM NICOLSON of that ilk, and His CREDITORS.

IN an action at Drummond of Ricartoun's instance against Sir William Nicolson of that ilk, and his Creditors, for proving, that, though he was bound coprincipal with him in a bond, yet he was but truly cautioner ; and that, a little before Sir William's death, he had ordered the drawing a bond of relief, and was satisfied with it, but prevented, by his falling distracted ; and so it was not gotten signed ; and which he had proven by the comuners, witnesses, and writer.

ALLEGED for the Creditors,—That the heir being dead, he who now fell to be apparent heir must be called, ere the process can go on.

ANSWERED,—The Creditors are the only true contradictors now, the estate being roup'd.

The Lords ordained the heir to be cited *inciderter* in this state of the process, ere they would proceed to advise it. And it may have difficulty how such a point can be made out by witnesses ; for though it be pregnant against Sir William's heirs, that he acknowledged Ricartoun was only cautioner, and that the comuners depone he was willing to give him a bond of relief, yet it seems hard to make such a probation meet the creditors, having been only taken by the Lords *ex officio*, and before answer, without determining the relevancy, and what it should import, being more than a *nuda emissio verborum*, which used not to be allowed to be probable by witnesses. *Vol. I. Page 750.*

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1697. *January 7.* COUNTESS OF KINCARDEN *against* WILLIAM ERSKINE.

PHESDO reported Veronica, Countess of Kincarden, against Mr William Erskine, to count for the rent of £500 Scots, possessed by the Lady Cardross, his mother, for the years he was factor of that estate ; seeing, though she was a creditor, and had an infeftment of annualrent, yet, by the decret of ranking, not only the Lady Kincarden, but several other creditors were preferred to her.

ALLEGED,—That the factors, before his entry, and those since his overgiving, always allowed her to possess ; and it had been unreasonable that he only should have quarrelled his mother's right, and have removed her.

ANSWERED,—The decret of ranking was his rule ; and though the Lady Kincarden connived when the rent paid her full jointure, yet it being now considerably fallen, that can never exoner him from the diligence incumbent on a factor ; and if he thought it uneasy, or undutiful to interfere with his mother, he might have given over the place.

The Lords did not decide it ; but thought, if he knew of the decret of rank-