

No 316. he had furnished a large quantity of lime; the LORDS found, in respect of the circumstances of the case, That no action lay upon the bill.

*Fol. Dic. v. 4. p. 129.*

\* \* This case is No 197. p. 1638. *voce* BILL of EXCHANGE.

1783. November 26. ALEXANDER, &C. WILSONS *against* WILLIAM WILSON.

No 317.

AN elder brother had intromitted with the whole effects of his father on his becoming superannuated, and incapable of attending to his affairs. Thirteen years afterward the representative of the elder brother was sued in an action, at the instance of the younger children, for rendering to them an equal distribution of those effects.

THE LORD ORDINARY having found the defender liable to account, he reclaimed to the Court; when it was

*Observed* on the Bench: To admit claims of this sort, especially among country people, at so great a distance of time from the predecessors death, would be the source of much injustice. The reasonable presumption is, that the funds have been properly applied by the elder brother.

Upon advising the petition for the defender, with answers for the pursuers, the LORDS altered the Lord Ordinary's judgment, and assoilzied.

Lord Ordinary, *Alva.* Act. *Ro. Craigie.* Alt. Lord Advocate *Erskine, Baillie.*  
Clerk, *Menzies.*

G. *Fol. Dic. v. 4. p. 129. Fac. Col. Na 129. p. 203.*

## DIVISION XV.

### *Levior Obligatio præsimitur.*

No 318. 1583. January. ELIZABETH ALLARDICE *against* ERSKINE & RAMSAY.

THERE being a contract made between Elizabeth Allardice and Margaret Erskine, her mother, with William Ramsay of Balemouth, Margaret's husband, in which they bound and obliged them to give to the said Elizabeth 600 merks, for all that she could crave for her bairn's part of gear; this contract was