

comparing to depone, nor producing the discharges, the term was circumduced, and the letters found orderly proceeded.

For the weakness of homologations, *vide supra*, November, 1676, No. 508, § 4. See Craig, p. 305. *Advocates' MS. No. 581, folio 289.*

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1677. *June 26.* The CREDITORS of PATRICK INGLIS of Eastbarnes *against* JOHN INGLIS of Cramond.

THERE was a large debate between the creditors of Mr Patrick Inglis of Eastbarnes and Mr John Inglis of Cramond, who had an infestment of annualrent furth of these lands, yet the other creditors were preferred to him; the case must be inquired after. *Vide supra*, A large debate of the creditors and Mr Patrick against his mother in December 1671; it is No. 282.

*Advocates' MS. No. 583, folio 289.*

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1677. *June.* The EARL of LOUTHIAN *against* the MASTER of BALMERINOC and JOHN ELPHINSTON.

THE Earl of Louthian raised a reduction and declarator against the Master of Balmerinoch and John Elphinston, to hear and see it found and declared, that a bond, wherein the said John Elphinston's name was, for the master's behoof, was truly blank in the creditor's name and sum, and left by the pursuer's father in the hands of Sir Thomas Nicolson of Carnock, advocate; and upon his decease was found amongst his papers by James Chalmers, then his servant, afterwards advocate, and taken out and delivered to the master, and filled up without any onerous cause; and therefore to be decerned to give it up. This was a reflecting conveyance if true, and like the case the town of Hamilton have with Robert Hendersone, for filling up in a blank bond 3000 merks instead of 500 merks. See the Information, *apud me.* Thir blanks are dangerous. *Advocates' MS. No. 584, folio 289.*

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1677. *June.* ANENT *INDEBITI SOLUTIO.*

WHERE one pursued for repetition of money *indebite solutum, condictione indebiti*, it fell to be questioned whether the annualrents of the sum paid could be condicted, since they were *fructus et accessio principalis sortis*, and so should follow it. On the other hand, they were not paid, and so could not be repeated; their mother only was paid, and they are *fructus bona fide consumpti*. And thus Cujace, in his Paratitle *ad Tit. C. de privilegio fisci*, tells, where a privileged creditor retracts the payment the debtor by gratification had made to another less privileged creditor, *condictione indebiti*, he recovers it, but *sine usuris*. Yet our Lords, on the 5th