

ferred to Mr John's oath, he deponed the said bond was given him back as a free donation. It being objected against his oath, that, James being his debtor at the time, *nemo præsuntitur donare quamdiu debet* :

This being reported to the Lords, they found Mr John's oath did not prove the allegiance, and therefore assoilyied him : for the brocard *debitor non præsuntitur donare* is but presumptive, and the probability of it was clearly elided here, by Mr John's positive oath that it was gifted. Though a debtor is not presumed to gift, law doth not hinder him to gift to his creditor, providing he clearly express it. See 12th November 1679, *Andersons*. *Vide Pape and Young 17th January 1679*.

James also alleged, that Elieston had got greater eases from the said James's creditors, with whom he had compounded, than he had stated to him in his account.

This the Lords found relevant, in respect Mr John was obliged to communicate to James the benefit of the abatements ; and therefore ordained Mr John to depone thereanent, in presence of those creditors who gave the compositions. Which he did, and denied that he got any more down than what he had inserted in his accounts. *Vide infra, 19th Dec. 1679. Vol. I. Page 39.*

1679. December 19.—In Mr John Elies of Elieston's case with Hamilton, (31st Jan. 1679,) a sheet of Elieston's disposition to his lady and children, containing his faculty to alter it, was quarrelled, as having been lately inserted by him, and as not being in it *ab initio* ; and so he could not securely pay to Elieston, his children and lady being infest.

The Lords, before answer, ordained the writer and witnesses in the disposition to be examined what they knew of the alteration of that sheet. *Vide infra, 25th February 1680. Vol. I. Page 71.*

1680. February 25.—Upon a bill given in by Mr John Elies of Elieston, the Lords reponed him again to the possession, aye and until he be paid of the sums found due to him by the count and reckoning ; and that notwithstanding the Lords of Privy Council had, at two several times, given Squire Hamilton 3000 merks out of that estate, upon caution to refund it if he were found Elieston's debtor. *Vide supra, 19th Dec. 1679. Vol. I. Page 90.*

1680. February 25. CUNNINGHAM against CUNNINGHAM of ENTERKIN, his Father.

THE Lords inclined to assoilyie Cunningham of Enterkin from his son's pursuit, and found he had fulfilled the contract of marriage to him ; and ordain the son to pay the 50,000 merks of provision to the younger children contained in the contract. Against which provision the son reclaimed, alleging he was then minor, and was circumvened in it. *Vol. I. Page 90.*

1680. February 25. PATRICK HEPBURN against The EARL of Lothian.

THE cause, Patrick Hepburn, apothecary, against the Earl of Lothian, was debated. Lothian had renewed his father's bond with this quality, If Patrick