brother 6000 merks, in place of the 8000 merks in his bond of provision, without any mention of the 2000 merks' bond: the young Laird being pursued for the 6000 merks, he proponed compensation on the 2000 merks' bond; and the pursuer having proven, by the defender's oath, that the restriction of the 8000 merks' bond of provision to 6000, was made without any payment of money, or onerous cause, on the defender's part;—the Lords repelled the compensation upon the 2000 merks' bond, in respect of the abatement of the sum in the bond of provision; because *debitor non præsumitur donare*, unless the defender would prove, by the pursuer's oath or writ, that the 2000 merks of abatement was gifted.

Page 45, No. 201.

1685. *March.* ROBERT BURNET, W. S. *against* M'LELLAN.

THE Lords found, That, to infer compensation *inter easdem personas*, it is not enough that the compenser had an assignation in his person before the other party's cedent was denuded by assignation, unless he could say that it was intimated before intimation of the other's assignation; for the cedent is not fully denuded without intimation.

It was debated in this cause, That infeftment having followed upon a bond of corroboration, compensation could not be founded on the debt corroborated, as not being *ejusdem qualitatis* with the other moveable sum craved to be compensed. Answered, The compensation is founded on the principal bond, whereon no infeftment was passed; and the principal debtor did not subscribe the bond of corroboration, so as the moveable quality of the first bond was not altered thereby. The Lords were clear to have sustained the sums compensable, notwithstanding the infeftment following upon such a corroboration; but the cause was determined upon the first point.

Page 63, No. 263.

1685. *March.* SIR ROBERT BAIRD *against* BARRAM.

A COMPRISING found simply null, for that the lands were denounced at the wrong cross. Here it was doubtful where the lands lay. *Vide* No. 299, [Calderwood against Frank, January 1684; Dict. 3728.]

Page 76, No. 313.

1685. *March.* The EARL of NORTHESK *against* SIR PATRICK HEPBURN.

IN a competition between Sir Patrick Hepburn, who adjudged, without taking infeftment, Dougal M'Pherson's adjudication of some lands, whereupon no infeftment had followed, and my Lord Northesk, who two years after also adjudged from Dougal, and took infeftment;—Alleged for Sir Patrick, That an adjudication without infeftment, being transmissible by assignation, an adjudica-