

1686. *January.* BALMADIES *against* HALGREEN.

FOUND that an executor-creditor could only compensate upon such part of the debt as he had recovered sentence for in his own name, the testament not being *executum* till sentence is obtained.

*Page 127, No. 468.*

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1686. *January.* MARJORY MASON *against* JOHN MASON.

IN the reduction of a discharge granted by a relict the day after her husband's death, when she was travailing of a child under the midwife's attendance, *ex capite luctus*; and also upon this ground, that she was not *compos mentis*, by reason of her pains and showers;—the Lords, before answer, allowed a mutual probation, and that by women witnesses, in respect of the pursuer's circumstances at the granting of the discharge.

*Page 156, No. 563.*

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1686. *January.* BAILIE WEDDERBURN *against* BAILIE JOHNSTOUN.

JAMES Sutherland and Bailie Johnstoun being in copartnership with some others, Bailie Wedderburn raised a pursuit against Bailie Johnstoun upon a breviate of the books of copartnership, containing Charge and Discharge, all written with the defender's hand, the leger-books being lost. Alleged for the defender, That, as the abbreviate instructs the charge, so it must instruct the discharge, especially considering, that, though the copartnership dissolved in the year 1663, the pursuer had not, till of late, pretended to any debt against the defender. Answered,—Bailie Johnstoun having been both book-holder and cash-keeper, and received 10s. per tun for his service, which, during the copartnership, amounted to upwards of £1000 sterling; and the copartnership having been carried on, by the granting of bonds and drawing of bills, for many thousand pounds sterling, upon the joint credit,—the discharge must be instructed by retired bonds, bills, and discharges thereof, otherwise the parties cannot be secured. The Lords found, that the articles of discharge relating to writ, must be instructed by the writ, where writ is usually taken, and required for persons' security.

*Page 259, No. 918.*

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1686. *January.* THOMAS WATSON *against* JOHN DRUMMOND.

JOHN Drummond, factor, and Mr Jackson, of London, having, by way of a correspondence, drawn several bills upon one another, John Drummond fitted an account of debit and credit, specifying the particular bills, containing £500 of balance upon his own debit, which he subscribed, without any obligation to