

ALLEGED,—You cannot recur against him, because you lost the cause *ex propria culpa*, in so far as you omitted to propone an obvious defence,—*viz.* that, by Lewis XIVth's laws of the marine, the owners are not liable, if the skipper do not pursue for his damages within four months; and this was after that time.

ANSWERED by Thomas Wylie,—I could do no more but establish an advocate to plead for me; and, if he has omitted a defence, I am not to blame, who knew neither the French laws nor customs.

The Lords remembered, that *competent and omitted* is a peculiar municipal custom; and, therefore, in reclaiming of prize ships, condemned by the admiral, they never used to debar strangers by that exception of its being competent and omitted, because they might justly be ignorant of it, and were only to be judged *secundum jus gentium*; and, therefore, in this case, found Thomas Wylie was not to blame, and that he ought to have his relief against this defender *pro tanto*.
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1694. February 23. FRENCH, &c. against 'The COUNTESS of WEMYSS.

ALLEGED,—You have not proven your husband's death. ANSWERED,—He went to the West Indies nine years ago, and there is no word from him, but all the relations from thence bear that he is dead.

The Lords found this sufficient, if proven, where the subject matter was executry; because there they found caution in the confirmed testament, to make forthcoming to all parties having interest.
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1694. February 23. MORISON in Leith, against LORD SALTON.

ARBRUCHEL reported Morison in Leith, against the Lord Salton; being two objections against an arrestment:—*1mo.* That the writer was not designed. This the Lords repelled; in regard it was before the Act of Parliament 1681, and they offered to supply, by condescending on his designation. *2do.* That one of the witnesses had only subscribed his name thus, "John Auld," without adjecting the word "witness." This the Lords also repelled, in regard he was called and designed as one of the witnesses in the body of the writ.
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1694. February 23 and 27. JAMES MURRAY, late of SKIRLING, against JAMES DOUGLASS, now of SKIRLING.

February 23.—THE £17,000 bond, as the remainder of the price of the lands,