

for the terms subsequent to that production. *2do*, That, as to the second defence, there was no difference betwixt an adjudication led upon no title and an adjudication led upon a wrong title.

The Lords found, That the inhibition, in this case, did not interrupt the tacit relocation.

N.B.—This carried by a narrow majority. There were five against five; but, by the President being of the opinion contrary to the decision, the other carried.

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1740. *January 25.*

INNES *against* FORBES.

[Kilk., No. 7, *Arrestment.*]

THERE had been a competition betwixt an arrester and indorsee, about a bill due to their common debtor, in which the arrester prevailed. The question now came about the arrester's expenses. It was allowed that they could not come off the subject arrested, which could only be affected by the debt which was the ground of the arrestment; but *quære*, Whether the arrester could not retain, for his expenses, a bill due to the common debtor, which had been indorsed to him for security of the debt now satisfied by the arrestment, and which, for that reason, the other creditor, *viz.* the indorsee, contended should be given up to him.

The Lords found the arrester might retain the bill for his expenses, in respect that it was hypothecated to him for security of his debt, that is, principal, interest, and expenses; and that he was obliged only, *ex gratia* or *æquitate*, to give it up to the other creditor, to whom he lay under no obligation.

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1740. *February 1.* ARCHIBALD URE *against* JAMES MITCHELSON.

THIS was a reduction of an election of an assay-master of the incorporation of goldsmiths of the city of Edinburgh. There were two reasons of reduction; the first was, That it was not in the power of the electors to alter the constitution of the incorporation, so far as to make this officer for life, or *ad culpam*, who before was only chosen for a year, in the same manner as the deacon, who formerly discharged that office, and whose depute the assay-master was. *2do*, This election was made by surprise, in so far as one half of the incorporation was absent and had no previous warning that a thing of so great importance was to be gone about.

The Lords unanimously reduced the election, upon the second reason. As to the first reason, they had no occasion to give a decision on it; but several of the Lords were of opinion, particularly Arniston, that constant use and im-