

1693. *January 19.* WALTER CHIESLY *against* GEORGE DRUMMOND.

The Lords refused to examine witnesses on the trust of this bond, that it was for Hamilton of Kallside's behoof; but granted diligence against those who were alleged to be the havers of the back-bond. *Vol. I. page 547.*

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1693. *January 19.* JAMES GORDON of Techmury *against* GORDON of Daach.

The Lords thought that the specific obligations of both the contracts of marriage behoved first to be fulfilled, and then the clauses of conquest: and that a provision of conquest, in a first contract, did not so bind up the father, but he might do rational deeds notwithstanding thereof; such as to provide a second wife and children of a subsequent marriage with competent provisions; and having implemented the special obligations, that he was so far master and arbiter of his conquest, that he might apply part of the conquest during the first marriage to the fulfilling of the obligations of the second, and *e contra*. And in this circumstantiate case, found the children of the first marriage, as being first creditors to him, had best right to the lands of Enochries, purchased and acquired by the Parson of Rothiemay, their father, during the standing of the marriage with their mother, though burdened with 6000 merks to the children of the second marriage; it being always instructed by the children of the first marriage, that the father had secured the bairns of the second marriage in as much as the special obligations in their mother's contract of marriage extended to, in regard it was confidently alleged that he had provided them to ten times more. *Vol. I. page 547.*

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1693. *January 19.* EDMISTON of Coldoch *against* JOHN SHAW.

EDMISTON of Coldoch against Mr. John Shaw, minister of the gospel at Kinaird. The Lords having read the disposition, they found it to be of the nature of a tailyie and destination of his succession, bearing only love and favour and other just considerations, in the narrative, and a reversion if he had any children; and therefore they reduced it in so far as it stood in the way of this bond, though it was gratuitous and subsequent, unless he would prove, that the granter had another visible estate at the time of this disposition; and the Lords did not think it enough that he offered to prove he was holden and reputed solvent at the time. *Vol. I. page 547.*

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1693. *January 19.* GIBSON *against* TROTTER.

The Lords reponed him against the circumduction of the term, and decret, on his paying the expenses; not so much because he was hindered, by the storm,

to come in and depone ; but because the decret was taken for the violent profits of a horse alleged spuilyed, and libelled to be worth L.72, yet the decret was for 2300 merks, a most exorbitant sum.

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1693. *January 20.* WILLIAM KINTORE and MR. GEORGE DICKSON *against* Sir JOHN HOME of Blackadder.

The Lords thought Blackadder's compensation very narrow and unclear. And therefore, before answer, ordained the Laird of Cokburn to depone if he has that letter from Blackadder to him, empowering Cokburn to pay L.200 Scots to the deceased Mr. Robert Dickson of Bughtrig, that it may appear whether it was only to him as trustee, or for his pains, or some other ground of debt.

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1693. *January 20.* MR. RICHARD SHERIFF *against* JOHN WALKER in Beinston.

THE Lords turned the decret of the Sheriff of Haddington into a libel, in regard he proceeded after there was a bill of advocation presented, and the cause advocated, and appointed to be discussed upon the bill, and the bill taken up by the pursuer's advocates, and thus intimated to the Sheriff. Though neither the bill or the copy was produced to him, yet the Lords found he was in *mala fide* to proceed; especially seeing it is to be presumed the party was also advertised of this bill by his advocates. But in regard a probation was led by witnesses, and that it was hard to cause them repeat it over again, being expensive, and, besides, some of them might be dead, therefore they ordained the probation to be transmitted: *Imo*, To see if it was taken before, or after the giving in of the bill of advocation; and, *2do*, To allow the other to give in what objections he has against the same.

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1693. *January 20.* JOHN WILSON, Fiscal of Cumnock, *against* WILLIAM CRAWFORD of Dalligles.

JOHN WILSON, procurator-fiscal of the Regality of Cumnock, against Mr. William Crawford of Dalligles. The Lords found little matter of riot in the master's hindering his tenant to stack in that barn yard, and casting down some of the sheaffs; but considered his contempt of the Judge, and his vilipending expressions and carriage, and thought that deserved a fine; and therefore sustained the decret *quoad* L.100 Scots, which was the half of the fine the bailie had imposed; because the face of authority is to be kept up and maintained. And repelled that allegiance, that the fiscal could not pursue this without the party injured his concurrence.

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