

Lords found he had an interest to seek inspection of his father's rights, and that summarily, without a new process; and that the inventory should be made forthcoming to his tutors, that they might pitch on what writs they desired a sight of.

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1694. *January 23.* THE TOWN of EDINBURGH and CAPTAIN WOOD *against* GEORGE DAVIDSON, &c. Brewers in Leith.

THE Town of Edinburgh, and Captain Wood, their tacksman of the imposition of the two pennies on the pint of ale, against George Davidson, and the other brewers in the Yard-heads of Leith. The Lords found they were bound to depone anent the quantities of ale they vented within the Town's liberties; but where the Leith tapsters had already deponed, that *quoad* these they should not depone again; and that they may depone in thir terms, that their bygone brewings exceeded not such a quantity, conform to the clause in the act of Privy Council, seeing they could not be positive for bygones: And found, the setting waiters at the ports, or giving them billets, did not so liberate them but that the Town's tacksman might also put them to their oaths.

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1694. *January 23.* DAVID ALLAN *against* DOCTOR GORDON and STRAITON.

THE generality of the Lords thought, that, if the competition had been only betwixt the children of the first and the second marriage, the provision of the tenement to the heirs of the first marriage in the contract would have preferred that heir; yet not so, but the father, being still fiar, might give a rational and moderate provision out of it to a second wife, or her children, in a second contract. But here it came to be the case of a singular successor, who had *bona fide* acquired right from the heir of the second marriage; and the heir of the first marriage had renounced, but was not served heir.

The Lords preferred Allan, who was the singular successor, deriving right from the heir of the second marriage: though some alleged that he was *in mala fide* to purchase; seeing, by the contract of marriage, he saw the tenement provided to the heir of the first marriage; and his *ignorantia juris* could not excuse him. Some minded the Lords of the famous case of the three sisters, recorded by Craig, *tit. De Successione Famin.* where the Lords divided the tenement amongst the three daughters of three several marriages, to each of whom the father had provided it in their mother's contract-matrimonial; and the like was moved here, that the tenement might be divided between the heirs of the two marriages. But it was decided *ut supra*.

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1694. *January 24.* JAMES THOMSON and ANDREW PETER *against* MORGAN.

THE Lords found the warrandice of his tack not incurred; seeing any debar-

ment they met with was only *via facti*, by driving away their goods off the ground, and hindering them, *manu forti*, to possess; and that warrantice only signified against legal and warrantable deeds; and if they had no right to debar you, then you might have pursued them for a riot, and got yourself repossessed by order of law.

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1694. *January 24.* JAMES CHAPMAN *against* ————— CHAPMAN.

JAMES Chapman against his brother of the second marriage, for reduction of a discharge he had given his father, of his mother's contract of marriage, on fraud and force; that, being in prison for 100 merks, his father offered to liberate him, if he would grant him that discharge; and that, being in the hands of a parent, he would only use it as a check; if not, he would let him rot in prison. ANSWERED,—That his discharge, bearing sums of money, could not be taken away by witnesses, especially the father being now dead, and he silent during all his life. The Lords, upon report, found the presumptions strong; and therefore, before answer, allowed the writer and witnesses to be examined,—what was the onerous cause of the discharge,—and what was the communing then,—and if the father used either threatenings or promises. As also, allowed the defenders to astruct the discharge, and adminiculate its onerous causes as they shall think fit.

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1694. *January 25.* ANDREW BOWER *against* ROBERT MITCHELL.

ANSTRUTHER reported Andrew Bower against Robert Mitchell. ALLEGED,—That no execution could pass on a bond payable on demand, by a charge of horning, till first requisition were made, at least the money demanded; seeing the requiring was the term of payment, and none could be charged before the term, for that was to begin at execution. The Lords found, That, whatever civility or good manners might oblige a man to, yet, in law, he needed not advertise the party; and that the charge on the King's letter was a sufficient demanding: and were so displeased with this trifling defence, that they recommended to the Ordinary who heard the cause, to modify expenses, besides the penalty of the bond.

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1694. *January 25.* The CHILDREN of WILLIAM ROBERTSON *against* HOME of KYMERGHAM.

RANKEILLER reported the Children of William Robertson, merchant in Eyemouth, and their Tutors, against Home of Kymergham, for the price of some timber their father furnished to him when he was married to the heiress of Ayton. ALLEGED,—It was not delivered to his factor, but his Lady's, and was applied for the girnels at Ayton; and his interest *jure mariti* having quickly