

5th of February they advised the other ; and found she was sufficiently remunerated *aliunde* for this her consent ; and that it was not proven that the said remuneration was either the design or cause of that bond given by Luss to Sir Archibald Stuart of Blackhall, for the Lady's behoof ; and therefore reduced it *in totum*.  
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1685. *February 11.* DANIEL NICOLSON *against* GILBERT FIFE.

DANIEL Nicolson, writer in Edinburgh, against Gilbert Fife, merchant, and late bailie there, is reported by Marcus. The case was: Major Robert Johnston and Gilbert Fife having made a vendition and excambion of their shares in two frigates ; and the privateer, of which Fife promised to give Johnston a 16th part, having gone to sea, and brought in a rich prize, Johnston pursued him before the Commissaries of Edinburgh, for his share of the said prize, and refers the agreement to his oath. Fife depones, That he had offered him a 16th part of that ship before it went out, but he refused it. The Commissaries found this quality of the refusing extrinsic, and therefore decerned. Fife suspending this, he ALLEGED,—It was never a completed bargain ; and that Johnston would never have owned nor claimed the said frigate, had she not brought up that prize ; and, having been at no expense on the out-reik, *dolus pro prius nemini debet prodesse*.

The Lords found, in respect the promise was made by Gilbert Fife in favours of Johnston, that, except Daniel Nicolson, who is now Johnston's assignee, will instruct, *scripto vel juramento*, that Johnston did require Fife to make him a right to that part of the ship before it went out, he had no right to any share of the prize brought in ; and therefore suspended the letters *simpliciter*. For they thought it hard that Gilbert Fife should be bound, when there was no document nor vestige whereupon Major Johnston's acceptation of the bargain could be fixed upon him ; so that, if a prize had not come up, he might have refused to accept from George Fife the 16th part of that frigate ; unless it could be proven to have been *unicus contextus* of a complex bargain.

Then the Lords, by a deliverance, on a bill of the 21st of February, ordained Fife to depone if Johnston out-reiked the frigate, or if he ever desired to do it, whereby he intimated that he looked upon it as his.

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1685. *February 12.* The EARL of TWEEDDALE *against* The EARL of LAUDERDALE and SIR WILLIAM SHARP.

THE Earl of Tweeddale gives in a petition against the Earl of Lauderdale and Sir William Sharp, craving Sir William may be ordained to produce his tack of the late Duke of Lauderdale's estate, by sight whereof, it would appear that