

was but a trust in his person for James Sutherland his father-in-law's behoof, which was *pars contractus*, and affected personal rights; and so the transaction could subsist no farther but for the money that was paid *pro tanto*, he breaking immediately after giving this discharge. Many of the Lords were for assoillyeing Polton from this reduction. *Vol. I. page 562.*

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1693. *February 17.* EDWARD BIRD of Ford *against* JAMES JUSTICE of Easter-Crichton.

CAPTAIN Edward Bird of Ford against James Justice of Easter-Crichton, being a debate about a seat in the kirk. The Lords remitted it back to the presbytery of Dalkeith, to review their own sentence, and to do therein what they should find just. But the Lords did look upon this as a civil interest, wherein the church was not sole judge, but if they wronged any, their sentence might be rectified. *Vol. I. page 562.*

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1693. *February 21.* GORDON of Daack *against* GORDON of Techmury.

THE Lords repelled the defence, that he was only convenable *pro virili parte*, and the other children, of the second marriage, ought also to be convened; and found each of them liable *in solidum in quantum* they were *lucrati*, and had received, and their portions extended to; but ordained the pursuer to assign him, for recovering his easier relief against the rest. *Vol. I. page 562.*

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1693. *February 21.* BAILIE of Jarviswood *against* BRAND of Baberton.

BAILIE of Jarviswood, as adjudger from Secretary Johnston, against Brand of Baberton. The Lords found, seeing Sir Archibald Johnston of Wariston, the Secretary's father, was now restored against his forfeiture *per modum justitiæ*, and that they offered to pay all Brand's just debts he had on the lands of Newhall, that therefore Brand ought to remove and cede the possession. If it had been only a restitution *per modum gratiæ*, he could not have obtained re-possession against a creditor. *Vol. I. page 563.*

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1693. *February 21.* BAIKIE of Tankerness *against* BAIKIE of Greentofts.

THE Lords adhered to their former interlocutor: and found Tankerness fiar, by the conception of the tailye; and seeing there was no irritancy, he could not be

restrained from providing a jointure to a wife, or the fee of his lands, or other provisions to his children, or from doing any other rational deed; and that he was not bound to lay these burdens on the untailyed estate, but that he might affect any of them he pleased. *Vol. I. page 563.*

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1693. *February 21.* ALEXANDER HAMILTON and LADY ROSLINE *against* SIR WILLIAM LOCKHART.

ALEXANDER HAMILTON, merchant, and the Lady Rosline, against Sir William Lockhart, the late solicitor. The Lords found his reason of reduction relevant of these bonds and bills of exchange, signed by him at Paris, that he was then minor, and had curators, and they were not consenting; but in regard they alleged he received the money, and he denied as to part of it, they ordained him, before answer, to depone if he received it or not; and did not in this case, in regard of his consent, put them to prove it was *in rem versam*; for many of the Lords thought it hard for factors abroad to inquire at young gentlemen following their travels or studies, if they be major, and if they have curators, and how they spend and employ their money. Yet, on the other hand, these bankers may cheat and over-reach minors exceedingly. *Vol. I. page 563.*

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1693. *February 21.* The CREDITORS of CARLOWRIE and HUMBY *against* MR. THOMAS SKEEN, and the LADY HOPTON.

THE Lords found the progress sufficient, though the contract of marriage was wanting, seeing none were quarrelling it; and would not put the creditors to prove its tenor: seeing they were liable in warrandice *pro rata* of their sums in case of eviction; and if securities were too strictly canvassed, few of these rouns of lands would take effect. [*See the case below.*] *Vol. I. page 563.*

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1693. *February 21.* MURRAY of Abercairney *against* MURRAY of Keiler.

AND this day, for the same cause, [as in the above case of Carlowrie's creditors,] they would not stop a roup of the lands of Murray of Keiler, pursued at the instance of Sir Robert Murray of Abercairney, on this pretence, that there were lands omitted to be proven in constituting the rental; but allowed them a diligence to the same day of the roup, for proving these omitted lands, or casualties. *Vol. I. page 563.*