

1694. *February 15.* ALEXANDER JOHNSTON of ELCHIESHIELS, *against* Mr JOHN MONTGOMERY, Writer to the Signet.

PRESDO reported Alexander Johnston of Elchieshiels, against Mr John Montgomery, Writer to the Signet, anent the imputation of some money Elchieshiels paid to John Muir, in part of a greater sum. The receipt bore, In part of payment of the bond, ticket, and account.

The Lords found the debtor had the application, and that, accordingly, he had ascribed it to the bond *primo loco*, which must be understood of the annualrents. And, in regard there were two bonds, one due to himself primarily, and the other only by an assignation unintimated, the Lords found the indefinite payment would ascribe to the first bond, to extinguish it *in totum*, before it could exhaust any part of the second bond, and then to the annualrents of it; and, *tertio loco*, to pay the *sors*; and, last of all, to the ticket, and the account.

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1694. *February 15.* MR JAMES FENTON *against* SIR ALEXANDER COCKBURN of LANTON and his CREDITORS.

PRESMENNAN reported the case of Mr James Fenton, against Sir Alexander Cockburn of Lanton and his Creditors, craving he may be put in possession of the little room of Winsheels, wherein he stands infest, preferable to all others; and which will not pay him the annualrent of his sum,—in regard, by the general factory granted to Lanton, he also intromitted with this room, and did not pay him his annualrents.

The Lords thought the desire reasonable, and ordained Mr James to have the possession and disposal of that piece,—with this condition, that, if it should happen to pay more than his annualrents, he should be accountable for the superplus.

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1694. *February 15.* LAWSON of CAIRNMUIR *against* JOHN KENNEDY, Apothecary.

LAWSON of Cairnmuir, against John Kennedy, apothecary, for implementing the contract of marriage with Bailie Lawson's wife's mother, whereby he was obliged to provide the heirs, or bairns of the marriage, to the sum of 10,000 merks, and to all the conquest during the standing of the marriage; and Bailie Lawson's wife was the only child of that marriage.

The Lords found he was obliged to fulfil the specific obligation of the 10,000 merks, and that he ought to secure her presently in it, payable at his death; but so as that it did not tie him up from necessary deeds; only he could not gratuitously exhaust it. But, as to the other conclusion of the libel, that his conquest during the continuance of that marriage should be liquidated by his oath, the Lords demurred exceedingly on it; thinking it would weaken and dissolve the paternal authority, and be a seminary of pleas for children against their parents;