

nion to dispose on it, either to strangers, or, in a second contract, to a second wife and children, yet these provisions must be rational and moderate; and, therefore, seeing the specific obligations of the second contract were more than doubled, they found the father's disposition of thir lands to his daughters of the first marriage, was preferable to the clause in the second contract, burdening the lands of Enchries, and none other, with that 6000 merks. *Vol. I. Page 592.*

*February 23.*—Mersington reported Gordon of Daach against Gordon of Techmurie. The Lords so far rectified their former interlocutor, 18th *January* last, that they found the specific sums, contained in the two respective contracts of marriage, were to be made up and fulfilled out of the several conquests of these two marriages *primo loco*; but, if the conquest of the first marriage was not able to implement the contract's special obligations, then the children of the first marriage might have access to affect the conquest during the standing of the second marriage, *et e contra.* *Vol. I. Page 615.*

1695. *February 8.*—Mersington reported Gordon of Daach against Gordon of Techmury, mentioned 18th *January* 1694. The Lords had first found the heir of the second marriage liable *in quantum erat lucratus*; and thereafter, that the conquest made during the first marriage behoved to go first towards implement and satisfaction of the obligations conceived in favours of the bairns of the first marriage; and, until that were exhausted, they could not recur to affect the conquest during the standing of the second marriage. Daach now insisted against the heir of the second marriage *super eo medio nuper perveniente*, that he had served himself heir.

REPLIED,—That the bonds he was pursued on were granted *in lecto*, and so could not reach him, the heir. This deathbed appearing only to be an infirmity in the granter's back, and rather *vitium* than *morbus sonticus*, and that he was ten years under it, and the bonds were three years before his death; they doubted much of such a deathbed, but allowed a probation anent his state and condition at that time, with this declaration, that, if Techmury, the heir, succumbed, they would burden him with large expenses. *Vol. I. Page 667.*

[See the remaining part of this Case, 11th *June* 1697, Dictionary, page 3299.]

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1695. *February 8.* MONTEITH of MILHALL *against* SIR ALEXANDER HOPE of CARSE.

PHILIPHAUGH reported the mutual declarators between Monteith of Milhall and Sir Alexander Hope of Carse, anent a burial-place in the church of Falkirk, which of old belonged to the Monteiths of Milhall, and was claimed by Milhall, as a cadet of the family of Carse; and who also offered to prove immemorial possession.

But the Lords preferred Carse, in respect it was *specificce* contained in his infestments; and, though burial-places were *inter res religiosas*, yet, with us, they were *in commercio*, and ordinarily transmitted by dispositions, with charter and seaine following thereon. And what particularly moved the Lords here, was, that Milhall and his predecessors had, by letters, sought tolerance to bury there, and so their possession had no title, but was merely precarious.

*Vol. I. Page 667.*