

1693. *January 19.* WALTER CHIESLY *against* GEORGE DRUMMOND.

The Lords refused to examine witnesses on the trust of this bond, that it was for Hamilton of Kallside's behoof; but granted diligence against those who were alleged to be the havers of the back-bond. *Vol. I. page 547.*

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1693. *January 19.* JAMES GORDON of Techmury *against* GORDON of Daach.

The Lords thought that the specific obligations of both the contracts of marriage behoved first to be fulfilled, and then the clauses of conquest: and that a provision of conquest, in a first contract, did not so bind up the father, but he might do rational deeds notwithstanding thereof; such as to provide a second wife and children of a subsequent marriage with competent provisions; and having implemented the special obligations, that he was so far master and arbiter of his conquest, that he might apply part of the conquest during the first marriage to the fulfilling of the obligations of the second, and *e contra*. And in this circumstantiate case, found the children of the first marriage, as being first creditors to him, had best right to the lands of Enochries, purchased and acquired by the Parson of Rothiemay, their father, during the standing of the marriage with their mother, though burdened with 6000 merks to the children of the second marriage; it being always instructed by the children of the first marriage, that the father had secured the bairns of the second marriage in as much as the special obligations in their mother's contract of marriage extended to, in regard it was confidently alleged that he had provided them to ten times more. *Vol. I. page 547.*

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1693. *January 19.* EDMISTON of Coldoch *against* JOHN SHAW.

EDMISTON of Coldoch against Mr. John Shaw, minister of the gospel at Kinaird. The Lords having read the disposition, they found it to be of the nature of a tailyie and destination of his succession, bearing only love and favour and other just considerations, in the narrative, and a reversion if he had any children; and therefore they reduced it in so far as it stood in the way of this bond, though it was gratuitous and subsequent, unless he would prove, that the granter had another visible estate at the time of this disposition; and the Lords did not think it enough that he offered to prove he was holden and reputed solvent at the time. *Vol. I. page 547.*

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1693. *January 19.* GIBSON *against* TROTTER.

The Lords reponed him against the circumduction of the term, and decreet, on his paying the expenses; not so much because he was hindered, by the storm,