

Lords found he had an interest to seek inspection of his father's rights, and that summarily, without a new process; and that the inventory should be made forthcoming to his tutors, that they might pitch on what writs they desired a sight of.

*Vol. I. Page 596.*

1694. *January 23.* THE TOWN of EDINBURGH and CAPTAIN WOOD *against* GEORGE DAVIDSON, &c. Brewers in Leith.

THE Town of Edinburgh, and Captain Wood, their tacksman of the imposition of the two pennies on the pint of ale, against George Davidson, and the other brewers in the Yard-heads of Leith. The Lords found they were bound to depone anent the quantities of ale they vented within the Town's liberties; but where the Leith tapsters had already deponed, that *quoad* these they should not depone again; and that they may depone in thir terms, that their bygone brewings exceeded not such a quantity, conform to the clause in the act of Privy Council, seeing they could not be positive for bygones: And found, the setting waiters at the ports, or giving them billets, did not so liberate them but that the Town's tacksman might also put them to their oaths.

*Vol. I. Page 596.*

1694. *January 23.* DAVID ALLAN *against* DOCTOR GORDON and STRAITON.

THE generality of the Lords thought, that, if the competition had been only betwixt the children of the first and the second marriage, the provision of the tenement to the heirs of the first marriage in the contract would have preferred that heir; yet not so, but the father, being still fiar, might give a rational and moderate provision out of it to a second wife, or her children, in a second contract. But here it came to be the case of a singular successor, who had *bona fide* acquired right from the heir of the second marriage; and the heir of the first marriage had renounced, but was not served heir.

The Lords preferred Allan, who was the singular successor, deriving right from the heir of the second marriage: though some alleged that he was *in mala fide* to purchase; seeing, by the contract of marriage, he saw the tenement provided to the heir of the first marriage; and his *ignorantia juris* could not excuse him. Some minded the Lords of the famous case of the three sisters, recorded by Craig, *tit. De Successione Famin.* where the Lords divided the tenement amongst the three daughters of three several marriages, to each of whom the father had provided it in their mother's contract-matrimonial; and the like was moved here, that the tenement might be divided between the heirs of the two marriages. But it was decided *ut supra*.

*Vol. I. Page 596.*

1694. *January 24.* JAMES THOMSON and ANDREW PETER *against* MORGAN.

THE Lords found the warrandice of his tack not incurred; seeing any debar-