

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