

ment they met with was only *via facti*, by driving away their goods off the ground, and hindering them, *manu forti*, to possess; and that warrantice only signified against legal and warrantable deeds; and if they had no right to debar you, then you might have pursued them for a riot, and got yourself repossessed by order of law.

*Vol. I. Page 597.*

1694. *January 24.* JAMES CHAPMAN *against* ————— CHAPMAN.

JAMES Chapman against his brother of the second marriage, for reduction of a discharge he had given his father, of his mother's contract of marriage, on fraud and force; that, being in prison for 100 merks, his father offered to liberate him, if he would grant him that discharge; and that, being in the hands of a parent, he would only use it as a check; if not, he would let him rot in prison. ANSWERED,—That his discharge, bearing sums of money, could not be taken away by witnesses, especially the father being now dead, and he silent during all his life. The Lords, upon report, found the presumptions strong; and therefore, before answer, allowed the writer and witnesses to be examined,—what was the onerous cause of the discharge,—and what was the communing then,—and if the father used either threatenings or promises. As also, allowed the defenders to astruct the discharge, and adminiculate its onerous causes as they shall think fit.

*Vol. I. Page 597.*

1694. *January 25.* ANDREW BOWER *against* ROBERT MITCHELL.

ANSTRUTHER reported Andrew Bower against Robert Mitchell. ALLEGED,—That no execution could pass on a bond payable on demand, by a charge of horning, till first requisition were made, at least the money demanded; seeing the requiring was the term of payment, and none could be charged before the term, for that was to begin at execution. The Lords found, That, whatever civility or good manners might oblige a man to, yet, in law, he needed not advertise the party; and that the charge on the King's letter was a sufficient demanding: and were so displeased with this trifling defence, that they recommended to the Ordinary who heard the cause, to modify expenses, besides the penalty of the bond.

*Vol. I. Page 598.*

1694. *January 25.* The CHILDREN of WILLIAM ROBERTSON *against* HOME of KYMERGHAM.

RANKEILLER reported the Children of William Robertson, merchant in Eyemouth, and their Tutors, against Home of Kymergham, for the price of some timber their father furnished to him when he was married to the heiress of Ayton. ALLEGED,—It was not delivered to his factor, but his Lady's, and was applied for the girnels at Ayton; and his interest *jure mariti* having quickly