

to be incompatible; and that the receiving of payments, conform to the first bond, after the date of the second, renders the second null, as incompatible with the first. No 287.

Fol. Dic. v. 2. p. 199. Forbes, p. 97.

1709. December 13. EARL LAUDERDALE *against* LORD YESTER.

A DEFENDER having proponed peremptory defences, which would have subjected him to the passive titles, if libelled, but no passive title being libelled, save that of lawfully charged to enter heir, and yet no charge produced, which the proponing peremptors could not infer an acknowledgment of, since it never was; the LORDS refused to allow the pursuer to amend his libel, by inserting the other passive titles, in order to conclude the defender as to these. No 288.

Fol. Dic. v. 2. p. 198. Forbes.

* * * This case is No 152. p. 12063.

1712. July 3. AGNES COLQUHOUN, Lady MONBODDO, *against* The Laird and Lady NEWMAINS.

THE Lady Monboddo having insisted in a process against the Laird and Lady Newmains, for declaring her right to the lands of North-woodside and Kippo, disposed by her, in her contract of marriage, to Alexander Irvine of Monboddo, her husband, reserving her own liferent, upon this ground, that there was a clause in the contract irritating his right, in case he failed to perform his part of the contract, which irritancy was incurred; the LORDS, the day of assoilzied the defenders from the declarator, reserving the pursuer's right of liferent, as accords. After extracting this decret of absolvitor, the pursuer added a new conclusion upon the margin of the principal summons, for declaring her right of liferent, and that the defenders should be liable to her for the rents of the lands.

THE LORDS found, that no new conclusion could be added to a summons, after an act is thereupon extracted, and far less after a decret extracted; but allowed the pursuer to insist upon the summons, as originally libelled, as accords.

Fol. Dic. v. 2. p. 198. Forbes, p. 606.

No 289.
No new conclusion can be added to a summons, after extracting act or decret thereon.

1713. July 16. JAMES DUNBAR, Merchant in Inverness, *against* The EARL of CROMARTY.

THE Earl of Cromarty being charged at the instance of John Dunbar, upon two bonds for borrowed money, he suspended, and raised improbation of the

No 290.