

had run in the contrary ; only, they desired to know if the custom of this burgh had allowed this trade to be under a deacon, (because several burghs had diversity of customs upon this head :) And finding they had more than a possessory judgment of seven years, they maintained them in their possession, and suspended the fine ; but prejudice to the town of Ayr, in a declarator, to exclude them from being a deaconry, if they think fit to insist. *Vol. I. Page 636.*

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1694. *July 20.* MR WILLIAM STEVENSON *against* SIR JOHN COCHRAN.

MR William Stevenson against Sir John Cochran, for declaring a bond extinct, because it was granted by him to Sir John, as superior of his land, blank in the sum, and he had not filled it up within year and day ; and so it expired, as all submissions do, where no decret-arbitral nor determination follows within the year.

ANSWERED,—Though it was a reference and submission *quoad* the sum to be filled up, yet it could not be reputed a submission as to the effect of expiring within year and day.

The Lords thought it not of the nature of an ordinary submission ; but, in regard it was an irregular power, they named some of their number *tanquam arbitri et boni viri*, at whose sight Sir John should fill it up with a moderate sum. *Vol. I. Page 636.*

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1694. *July 20.* JAMES DALRYMPLE *against* ALEXANDER GIBSON.

MERSINGTON reported the competition between Mr James Dalrymple and Alexander Gibson, the two clerks, anent the process for ranking the creditors of the estates of Nicolson, Laswade, and Cockburn's-path. The first claimed it, because he was clerk to the first suspension and multiplepointing among their creditors. The second contended, it behoved to fall to him, in regard he was clerk to the summons of roup ; which containing a conclusion for ranking, (though Mr James alleged that was incompatible with a roup, which the Lords did not think,) as the more sovereign process, it behoved to draw all the rest.

The Lords preferred Mr Gibson, as clerk to the roup, by the votes of five against four ; in regard the former processes were terminated by a decret, and so there was *lis finita*. *Vol. I. Page 198.*

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1694. *July 20.* MR HUGH DALRYMPLE *against* LORD POLWARTH, &c.

MR Hugh Dalrymple, craving to have his probation advised, in order to the sale and roup of North Berwick, my Lord Polwart, and some other creditors, opposed it ; alleging that he had a process depending for evicting the property

of these lands, at least of the heugh; and he would not suffer his lands to be sold.

ANSWERED,—He could have no prejudice; for, if he prevailed, he would either obtain the price, or reduce and rescind the roup, in his option; and they were not selling his right to the lands, but Sir William Dick's.

The Lords found, This being a summary process, it could not be stopped on the discussing of Polwart's interest; and that we ought not to lay more clogs on thir purchases, to embarrass them, than the Act of Parliament had done: And, therefore, ordained the roup to go on, but prejudice always and with express reservation of my Lord Polwart's right, as accords; seeing we had several instances, where parties, claiming right to the lands, had interposed, yet were rejected, and not suffered to stop the roup: as in Sir George Lockhart's gift of the recognition of Laswade; in Sir Godfrey Mackulloch's interest on Gordon of Cairdness's estate; in the tailyie of Bonnington's lands, and sundry others.

*Vol. I. Page 636.*

1694. *July 21.* KER of HUNDWOOD, and KER of GRANGE, *against* KER of MORISTON, &c.

IN a process, pursued by Kers of Hundwood and Grange, against Ker of Moriston and his tutors, the king's advocate appeared, and craved who would abide by the execution of the citation, in regard he would improve it as false: seeing it bore to be subscribed by Robert King, messenger; and he, with the witnesses, declared, that they disclaimed the same, as forged.

The Lords, on this, caused apprehend Grange, and John Alvis, his agent in the cause, to be imprisoned until the affairs were tried; and, in the mean time, to be kept separately till examined, that they may not concert and agree upon a premeditated answer. It seemed a silly forgery, for saving a few dollars' expense, to hazard themselves; it not being the execution of a horning, inhibition, or the like diligence, but of a common summons. But these go very oft unnoticed; and, when they are suspected, few will venture to propone the falsehood *peremptorie totius causæ*, lest, by the bribing of such mean parties, they may succumb. But Grange, by a petition, condescending upon one Cameron, a messenger, who gave him King's execution, he was liberated, and King ordained to be apprehended.

*Vol. I. Page 636.*

1694. *July 24.* JOHN ROBERTSON, Portioner of Meiklegovan, *against* The JUDGE and FISCAL of the Regality of Glasgow.

MERSINGTON reported a bill of suspension, John Robertson, portioner of Meiklegovan, against the Judge and Fiscal of the regality of Glasgow, for an exorbitant fine of £4 sterling, for a staff found beside him, said to be stolen, and £3 sterling of expenses, and £200 Scots to their fiscal; in regard, he said, if they found the said staff beside him, he was content to be condemned in the whole libel; and that the pursuer had given his *juramentum in litem*.