

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