

charter, bounding him to the sea-flood. They contended, that, if they had not dyked it out, the sea flowed up to the ground he claimed ; seeing, *littus maris est quatenus maximus fluctus hibernus excurrit.*

The Lords appointed a visitation of the ground, and named some of their number for that effect. *Vol. I. Page 635.*

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1694. July 20. MR WILLIAM DALGARDNO *against* ROBERT KEITH of LENTUSH.

THE Lords found, seeing it was not a special legacy, but out of the whole moveables, and you having transacted and given a bond for a sum, and got abatement, it is no reason to liberate you, that you offer to prove now, that you had loss by the executry ; seeing it was a bargain in gross, and *per aversionem*, and whereof you took the hazard. And as to the £800 bond, the Lords found it an intrinsic quality, that he should get a discharge of a prior obligation ; therefore, though the Lords decerned, yet they superseded execution till the discharge were delivered *simul et semel.* Some were for superseding extract ; but the other carried it. *Vol. I. Page 635.*

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1694. July 20. MR WILLIAM WOOD, Minister, *against* THOMSON of DININNO.

MR William Wood, minister, against Thomson of Dininno, for the teinds : and the tenant having been holden as confessed on the rental in his former master's time, the Lords did now repon him to his oath against it. And, as for the crop 1693, the Lords would not decern for that year's stipend, because he was deposed by the presbytery in April that year ; and, though the sentence was only in absence, and for contumacy, and he had appealed, and it was not yet discussed, (though he had not applied to bring it into the last Assembly, and so must be presumed to have deserted it,) and that these appeals did not stop execution, yet the Lords were unwilling to meddle with the ecclesiastic sentence ; and, therefore, suspended the letters, not simply, but aye and until he should get himself reponed against that sentence of deprivation. *Vol. I. Page 635.*

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1694. July 20. The FLESHERS of AYR *against* The MAGISTRATES thereof.

THE Fleshers of Ayr against the Magistrates thereof, for suspending a fine imposed upon them for choosing a deacon of their trade, contrary to an act of their town-council, cassing and annulling that incorporation from having a deaconry ; (which many think should be done through all the kingdom, not only as to the fleshers, but as to the baxters, and other trades that furnish vivers.)

ANSWERED by the Town, That the Act of Parliament 1555 discharges deacons.

The Lords did not regard this ; seeing the universal practice of the nation

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