

the whole debate in the decret before the interlocutor, that it behoved to be the Lords' sense and meaning that Rankeiler's tack was extinct and passed from by Dumfermline's accepting a posterior tack from Queen Anne; seeing *posteriora derogant prioribus*, and that the law notion of incompatibility is, that they cannot both subsist, but the last is interpreted to be a renouncing, quitting, and passing from the first: though, if one look here to the *cortex verborum* of the interlocutor, it favours the Chancellor, as if Queen Anne's tack had been found null, as inconsistent with Rankeiler's tack: which the Lords could not judge on, seeing Rankeiler's heirs were not called. This alteration fell by some of the Lords changing their votes, and by two declaring themselves *non liquet*; so, as before it was seven against five, it was now six and six; and the President's vote in favours of Lauderdale did cast the balance. Sentences of judges deserve the same allowance that other acts have by law, *viz.* that such an interpretation is to be laid hold on as will make it consistent with itself, and evite absurdity, and cause it subsist and not fall as null. *Vol. I. Page 626.*

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1694. July 5. JAMES NAYSMITH *against* The TENANTS of WHITSLAID and WILLIAM MONTGOMERY.

JAMES Naysmith, pursuing the Tenants of Whitslaid, and William Montgomery, on a general service, as heir to his mother;—it was OBJECTED,—That it was not a sufficient active title to carry the right of the adjudication, because there was infestment passed thereupon. ANSWERED,—He passed from the infestment; and, in that case, there was no doubt but the general service was sufficient. The Lords found he could not divide them, seeing there was infestment actually taken; and which could not be conveyed but by a special service. *Vol. I. Page 626.*

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1694. July 5. THOMAS YOUNG and JOHN THOMSON *against* DONALDSON, GAIRNS, and GUTHRY.

THERE was no doubt but the certification in a single reduction was taken off by production of the writ then called for, on paying the expenses; but the difficulty was, By your not producing it then, you defrauded me of this reply, *viz.* that you was satisfied and paid by your intromission; and which I would have proven by Helen Thomas her oath; and which I now lose by her death. The Lords reponed them, finding the mean of probation was not perished; seeing they might still prove her intromissions either *scripto*, by her discharges, or even by witnesses, that she possessed and intromitted. *Vol. I. Page 627.*

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1694. July 5. MR JAMES DEAS, Advocate, *against* JAMES HAY, Writer to the Signet.

THE Lords found, As to the 500 merks of fine that he paid, there could be no