

could not challenge any debt owing to him, seeing he was become himself debtor to him to whom he was creditor. Which prior debt, the Lords found, was not taken away by the foresaid posterior bond, upon any pretence that he, who was a prior creditor, needed never to have constituted himself debtor thereafter to him who was standing addebted unto him; seeing he might have allowed or defalked the preceding debt, which is probable, and presumed he did, before he gave a new bond to him who was standing his debtor before, as said is. Which presumption the Lords found not sufficient to extinguish or take away the first bond, but found that both the bonds might subsist, and that the last should only compensate the first bond *pro tanto*.

*Act. Lawtie. Alt. ———. Gibson, Clerk.*

*Page 114.*

1624. *February 27.* MAXWEL of Pollock *against* MAXWEL of Cowhill.

IN an action of reduction, at the instance of ——— Maxwell of Pollock against ——— Maxwel of Cowhill, for reduction of an heritable right of lands holden of the abbacy of Melross, upon the reason of anteriority, because the pursuer was first infeft and first confirmed,—the defender compearing, and proponing an exception that there was a submission betwixt the parties' fathers (they then being infeft in the lands,) of all controversies betwixt them, to certain judges, whereupon decret followed, by the which the right to the lands libelled was decerned to pertain in all time coming to the excipient;—this exception was not sustained: for the Lords found this decret not sufficient to maintain the defender in the right of the lands controverted, proceeding upon a submission of the tenour foresaid; for the Lords found that a submission, wherein parties submitted all controversies generally, could not be a warrant to decide the heritable right of the lands to pertain to one of the parties and to take the same away from the other party; except either the right of the lands had been especially submitted, or else that the same had been given in by the parties in their claims before the judges: and that the general clause, submitting all controversies betwixt the parties, could not be a sufficient warrant to pronounce that decret.

*Scot, Clerk. Vid. 15th December 1631, Dr Kincaid against Aikenhead.*

*Page 114.*

1624. *March 23.*

DUFF *against* KELLIE.

IN an action of double-poining betwixt Duff and Kellie,—the Lords would not sustain a disposition made by a common debtor to sundry persons, done to one who was a conjunct person, *viz.* brother-in-law to the debtor, bearing to be done for onerous causes and for satisfying of a debt owing to the receiver,—except the said party, to whom the same was made, should qualify and produce and instruct the debts, for the satisfying whereof the said disposition was made, otherwise than by the confession contained in the narrative thereof. And the