

burghs and other traders was the Act 1693 ; and such as repudiated the offer of a participation of trade behoved to give over trade, if they would not subject themselves to a share of the burden annexed thereto ; and found they could not plead *bonā fides*, after the public Act of Parliament 1693 : and therefore nominated two of the Lords, with the Reporter, to adjust the quota of thir burghs, for bygones, and in time coming. But, for the period and interval, from the Act 1690 to the Act 1693, found them only liable in the penalties, where they shall be proven to have transgressed the tenor of that Act, in buying staple goods from unfreemen, not burgesses of royal burghs. *Vol. I. Page 710.*

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1696. *February 14.* SYMPSON and HOME *against* The EARL of HOME.

ANSTRUTHER reported Sympson and Home against the Earl of Home. The Lords found, Though they were served as lineal heirs-portioners to Jean Home, Lady Aiton, yet, she being heir by virtue of her father's tailyie, they could not call for reduction and improbation of that tailyie ; for that were to quarrel their author's right ; so the Earl was not obliged to take a term : But if they insisted, in the exhibition and declarator, that the Earl had amitted his right to the Barony of Aiton, by incurring the irritancy, through assuming the title and dignity as Earl of Home, they might lawfully do the same.

*Vol. I. Page 711.*

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1696. *February 19.* GRAY of CREIGHY *against* GORDON of AVACHY.

GRAY of Creighy against Gordon of Avachy, for payment of a debt contained in his grandfather's bond. The passive titles were offered to be connected thus :---You represent your father, and he had a disposition to a part of the estate posterior to the contracting my debt. ALLEGED,---A disposition was penal, and like vitious intromission ; which was never sustained to infer a universal passive title, unless established in the party's own lifetime ; because he might have grounds to elide it, and ascribe his intromission, which might be unknown to others ; and even behaviour as heir (which is an heritable passive title,) must be proven against the party while in life ; and it were hard that a disposition to a few acres should, *præceptione hæreditatis*, subject a man to the whole debt. ANSWERED,---There is a great difference betwixt vitious intromission, which is only probable by witnesses, and accepting a disposition *post contractum debitum*, which is instructed *scripto*.

The Lords thought the point new, and ordained it to be heard in presence.

*Vol. I. Page 712.*

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1696. *February 19.* ARCHIBALD BUCHANNAN *against* BAILIE of WALSTON.

LAUDERDALE reported Archibald Buchanan against Bailie of Walston, for re-