

1540. *March 16.* TENANTS of Liberton *against* SOMERVILLE.

No 45.

GIF ony landis, haldin of our soverane Lord in cheif, fallis and becumis in his Hienes's handis be ressoun of foirfalture, led and deducit for the crime of lese-majestic committit be the proprietar thairof, his Hienes's vassal; and the samin be disponit be his Hienes to the said immediat superiour, with this provisioun, that he sall enter the sub-vassalis and fre tenentis in thair tenandries, thay payand thair part to him of the compositioun quhilk he payit for the haille, efter the rate and quantitie of thair tenandries; he sould give thame new infestment, thay payand the rate of the compositioun to him thairfoir, for thair part of the said compositioun; and, gif he and thay cannot agre thairanent, thay aucht and sould pay na mair for ilk tenandrie than thre zeiris maillis, for thair part of the said compositioun.

*Balfour, (FORFEITURE.) No 3. p. 561.*

1542. *December 19.*

*A. against B.*

No 46.

ANE tenent or fre-halder, haldand landis of ony persoun quha is foirfaltit may not be put fra his possessioun be the King, or his donatar, except he be lauchfullie callit and ordourlie put thairfra.

*Balfour, (FORFEITURE.) No 2. p. 561.*

1543. *March 20.*

CAMPBELL *against* GRANGE.

No 47.

LIKE as ane beand foirfaltit, all his sub-tenentis cumis under foirfaltour; swa he beand restorit, all his fre tenentis aucht and sould be reponit in thair awn place, in the quhilk thay wer befoir the geving of the dome of foirfalture; and na paction or appointment maid betwix him quha is restorit, and the King's grace, concerning thair tenandries, without thair consent, may be hurtful or prejudicial to thame anent thair restitutioun.

*Balfour, (FORFEITURE.) No 14. p. 564.*

1621. *November 27.* EARL of NITHSDALE *against* IRVING.

No 48.

IN an action of removing, pursued at the instance of the Earl of Nithsdale *contra* Irving, founded upon an heritable right to the lands of ———, made to the said Earl, by his umquhile brother the Lord Maxwell for the time, wherein it was excepted by the defender, that the sasine of the pursuer could give him

If the forfeiture shall be rescinded, the intermediate acts of the vassal are good.

No 48. no action, because the sasine was given by warrant of the charter and precept granted by the said Lord Maxwell, who, after the charter and precept, and before the sasine, was forfaulted; and so the sasine behoved to fall, the author's right falling, and the King by the forfaultry having become in the right, which was an impediment to the lawfulness of the sasine. It was *answered*, That the forfaultry was rescinded *ab initio*, which made the sasine to convalesce; which depended upon the preceding charter and precept.—THE LORDS repelled the exception, in respect of the reply of rescission of forfaultry, and found, that there needed no other warrant to that sasine, nor no new sasine after the forfaultry; but that the said sasine, taken by virtue of the said precept, was sufficient, notwithstanding the intervening forfaultry, in respect of the rescission thereof as said is.

Act, *Hope & Cuningbame.*

Alt. *Nicolson & Oliphant.*

Clerk, *Gibson.*

*Durie, p. 4.*

1626. *July 27.*

FINLAYSON *against* Her TENANTS.

No 49.  
Found in conformity with the above.

ISOBEL FINLAYSON being infest by umquhile Gray her husband, who was infest in certain cottages in Coldingham by the King, as vacant in his hands, by the dishabilitation of John Stuart, son to the umquhile forfaulted Earl of Bothwell, provided to the priory of Coldingham; and, by the annexation of the said priory to the Crown, pursues removing against some tenants, possessors of the said cottages; wherein the said John Stuart compearing for his interest, *alleged*, that the said act of dishabilitation and annexation of the said priory, which was the ground of the pursuer's husband's infestment, was rescinded and reduced by a posterior act of Parliament, with all infestments depending thereon, and are declared null; and the said act ordained the nullity to be received by exception or reply, and therefore that infestment cannot be a title, whereupon either to pursue or defend. This exception was found relevant, and instantly proven, by production of the said act of Parliament, and so absolvitor was given; albeit it was *replied*, that the defenders called were tenants to the pursuer and her husband, to whom they paid mail and duty; so that their possession could not be inverted until they were orderly removed by the excipient, and the said act could not prejudge the pursuer and her husband, who was not called thereto; likeas, the act of Parliament *salvo jure cujuslibet*, works so far for the pursuer, that by any other act in favours of a particular person, a third party's right never called cannot be prejudged; which replies were repelled, and notwithstanding thereof, the exception sustained.

Act, ———.

Alt. *Craig.*

Clerk, *Hay.*

*Durie, p. 229.*