

can never claim the benefit of the said sentence, specially so summarily to charge therefore; because it is not obtained at his own instance, and he is neither made assignee thereto by the obtainer thereof, nor has he obtained it transferred in him as successor in the right of the same, as heritor of the lands. The reason was not respected, and the process sustained at the same pursuer's instance; but this charge was sustained as converted into a pursuit, and as if the same had been moved, for payment of abstracted multures; which, as so converted, the Lords ordained the defenders to answer in this same process of suspension, in respect the charger referred the quantity to the defender's own oath; the Lords found, and declared the cautioner in the suspension to be freed of his becoming caution in the suspension, sicklike as if he never had been acted, and found no necessity that the decret should be transferred, or that the pursuer should have been assigned thereto.

Scot, *Clerk. Vid.* 29th July 1634, L. Innerweik; and for the last part, 25th July 1626, James Stuart, and the cases there.

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1636. *March 2.* The EARL of TULLIBARDEN *against* The BARON of MONESK.

THE Earl of Tullibarden pursuing the Baron of Monesk, as assignee constituted to all the reversions granted to his brother, umquhile William Earl of Tullibarden, for exhibition of certain contracts made betwixt his umquhile brother and the said defender, concerning the wadset of certain lands to him, under reversion, that he might have the transumpt of the said contracts: And the defender alleging that the assignation to the reversions was not registrat in the secretary's registers, as is required by the Act of Parliament;—the Lords repelled this allegiance, because it was not proponed for any who acclaimed any better right to this reversion than this pursuer; neither are assignations to reversions contained in the act of Parliament, which the Lords could not extend.

Act. Nicolson. Alt. Stuart. Gibson, Clerk. Vid. 25th November 1626, Turnbull, and the cases there.

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1636. *March 29.* _____ *against* _____.

ONE having obtained decret against another, for payment of thirty bolls of victual, and seven score pounds also of money; which being suspended upon a discharge granted by the obtainer of the sentence; which discharge was only subscribed by one notary, and so was quarrelled as null, not being subscribed by two notaries before four witnesses, conform to the Act of Parliament, being in a matter more than £100; and the party offering to retrench the discharge, to work only liberation for £100, and no more of the quantity in the sentence: And the other alleging that this being the body of a writ peccant against the law, it could not be restricted to be good in one part and to fall in the rest;—

The Lords found that the party might restrict his discharge to £100; and repelled the allegiance, and sustained the discharge for to liberate from £100.

Act. Baird. Alt. Gibson. Hay, Clerk.

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1636. *July 21.* GREIR OF BARRARGE *against* The LAIRD OF CLOSBURN.

CERTAIN lands being adjudged to a creditor, whereupon the L. Closburn, who was superior to the lands adjudged, being charged to receive the creditor in the vassal's place; who suspending, that he ought not to do it, while he got a year's duty paid him, according to the order kept in comprisings, seeing adjudications are of the same nature, and in every thing alike and equal, in so far as concerns the superior's receiving and changing of his vassals;—the Lords found the letters orderly proceeded, notwithstanding of the reason, and that they could not compel the creditor to pay a year's duty to the superior, as is used in comprisings; for albeit there may be alike and the same reason for adjudications in this case, as for comprisings, yet seeing there are express laws and Acts of Parliament for comprisings, which are not for adjudications,—the Lords found that they could not extend the Acts, which made only mention of comprisings, that the superior should have a year's duty, for entry of the compriser, and doth not make any such mention of adjudications; it being also clear, that the Act which makes mention of adjudications, is done in the same Parliament wherein the Act of comprising was done, *viz.* the one the sixth Act, and the other the seventh Act, Par. 1621; and that the said Act of adjudication, in sundry parts, has relation to the preceding immediate Act of comprisings, and makes them alike in sundry other points, and has no ordinance in this point; and the Lords thought, that their power reached not safely to them to make any new law, where there was no practise thereanent before; but the Lords ordained the parties to travel, to see if they could agree amongst themselves, for a composition to be paid: which may appear very considerable, seeing the superior ought not to be compelled to change his vassal, not being satisfied therefore, no more than he can be compelled to receive a stranger, or a singular successor, upon his vassal's resignation unsatisfied; otherwise the creditor and the vassal debtor may ever collude to the superior's prejudice.

Act. Maxwel. Alt. Cunninghame. Vid. 20th January 1637, betwixt the same parties.

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1636. *July 21.* ROBERT CORSER *against* ANDREW DURIE.

ONE Robert Corser in Dysert pursues Andrew Durie, as *gerens se pro hærede* to his umquhile father William Durie of Newton, for payment of some money addebted by his father to him; wherein it being qualified, that the said defender had behaved himself as heir by this qualification, *viz.* That his said father had set the lands of Newton, stock and teinds, for five years to a tenant, whereof there being divers years yet to run, the time of his father's decease,