

and of dangerous importance, if creditors were allowed to invert their possession, and ascribe it to any other cause than that by which they entered: but all concluded, that it would extinguish the adjudication *pro tanto*, aye till they agreed with the liferentrix, and entered by her right, if Agnes proved that the bishop was in possession; for it was to be presumed that Mr Rory's possession was only a continuation of the same in his lady's right, who was one of the heirs-portioners to the archbishop.

*Vol. I. Page 587.*

1694. *January 3.* MATTHEW CAMPBELL of WATERHAUGH *against* ELIZABETH NEILSON.

ON bill and answers, between Mr Matthew Campbell of Waterhaugh, and Elizabeth Neilson,—the Lords found a forfeited person, being debtor in an annuity of victual to a widow, he had the benefit of the act rescissory of fines and forfeitures, granting them a *supersedere* of their debts and annualrents during the time of their being dispossessed of their estates; and though it related to no *sors*, or principal sum, yet there was the same parity of reason for it as for principals bearing interest; and, therefore, found it comprehended in the act; though it was argued, that this being a correctory law, contrary to the common law, it was to be strictly interpreted, and not to be extended beyond its precise words. Then the next vote was, Whether the charge of horning was warrantable for the annuities preceding the forfeiture. And the Lords found it was; conform to their decision in Cavers's case against Lord Polwart, *supra*, December 14th 1693.

*Vol. I. Page 587.*

1694. *January 4.* PRINGLE of TORWOODLEY *against* The VISCOUNT of STRATHALLAN.

PRINGLE of Torwoodley against the Viscount of Strathallan, for restoring the forty-five thousand merks of composition he paid for obtaining a remission to his father and a right to his forfeiture. ALLEGED,—He had no title to seek repetition of it, seeing he was neither heir nor executor to his father. And remembered the interlocutor of Parliament against the Earl of Argyle, that he could not pursue his father's judges without a title.

ANSWERED,—That he had, besides the general rescissory act, likewise a special Act of Parliament, appointing it to be paid back to him *nominatim*; and that he himself, and not his father, was the payer of the money, and his act was excepted out of the act *salvo jure*.

REPLIED,—It was only payable to him as son and heir; and if he had not a title to discharge, another might afterwards enter, and confirm it, and seek it over again; and though he paid it, yet it was out of his father's means and estate.

The Lords decerned; but withal ordained Torwoodley either to enter heir or executor, as the defender should desire, for his security, and as the nature of the deed required; which Torwoodley offered to do.

*Vol. I. Page 588.*