

son, and caution found by him at the time of the granting of the suspension, as use is; and, before the discussing of the suspension, Hunter the charger dies:—this contract, with the act of caution and suspension, was desired to be transferred in the heir of that Hunter who charged. Which the Lords sustained, and found that there was no necessity of a new charge, but that the cautioner in the suspension remained obliged, notwithstanding of the charger's decease, in respect the cautioner and principal suspender himself were both in life.

Act. Haliburton. *Alt.* Russel. Gibson *Clerk.* *Vid.* 21st March, 1623, Cunninghame *against* E. of Glencairn; 23d December 1630, Mr Robert Hart.

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1623. July 25. The EARL of NITHSDALE *against* _____

EARL Nithsdale, infest as heir to his brother, pursuing removing from certain lands; the defender compearing, and alleging an infestment granted by the King's Majesty to him, proceeding upon the forfaultry of the pursuer's brother, and possession conform thereto;—the Lords repelled this allegiance, because the pursuer replied, that the forfaultry whereupon the excipient's right depended was reduced. Which reply the Lords found relevant to be received in the process summarily, but any reduction to take the defender's right away flowing from the forfaulter; notwithstanding that the defender duplied, that, in the same Parliament wherein the forfaultry was reduced, there was an express Act made, that what was done in that Parliament should not prejudice particular parties, *viz.* the Act *salvo jure cujuslibet*; and so, he being a party, having interest, and not called to that reduction of the forfaulter, cannot be prejudged. Which duply was repelled.

Act. Hope. *Alt.* Belshes. Gibson, *Clerk.* *Vid.* 10th December 1622, E. of Rothes; *penult.* June 1627, John Stuart; and 7th February 1627, John Stuart; *ult.* March 1627, Lo. Balmerinoch; 27th November 1621, E. Nithsdale; 23d July 1624, Lo. Harris; 23d July 1625, Patrick Whitelaw; 27th July 1626, Finlason *against* Cunningham,

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1623. July 25. _____ *against* _____

IN an action _____ against _____, for redemption of lands, the defender, compearing, desired the money to be exhibited before the Lords, that he be not frustrate thereof, and thereafter was content that sentence should pass;—the Lords found the pursuer could not be compelled to exhibit the money; seeing he had consigned the same, conform to the order of the reversion; and could not be further compelled to consign the same before the Lords, and to take it up where he had consigned it the time of the order, seeing the order was not quarrelled.

Act.———. *Alt.* Belshes. *Vid.* 7th December 1631, Grierson *against* Gordon.

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