

1672. November 8. JEREMY SPENCE.

THIS day the Lords, having received information that Jeremy Spence, servitor to the Lord Newbaith, had forged his master's hand to a bill of suspension, at the instance of ———, captain of a privateer, against a stranger; and he having been examined thereupon, and confessed the same;—the Lords, with open doors, having called in the whole advocates, found the same to be a forgery, and declared the said Jeremy infamous, and incapable of any office depending upon the Lords; and remitted him to the Justices, and continued him in prison; and ordained the suspension to be recalled, and the same, with the bill, to be cancelled, which was done accordingly.

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1672. November 15. MAJOR BIGGAR *against* The LAIRD of NIDDRIE.

MAJOR Biggar, having charged Niddrie for payment of a bond, wherein Niddrie was cautioner for Keith of Edmiston to the Laird of Wolmet, for 7000 merks; given, upon arbitrament, for the mutilation of Wolmet's hand; and bearing a provision, that, before payment, Wolmet should grant a letter of slains, and procure a remission to him;—which being now procured, and Major Biggar having right to the bond, charges Niddrie; who suspends; and alleges, He ought to have retention of a part of the annualrent, conform to the Acts of Parliament 1646, 1647, and 1648. It was answered, That some of these Acts did bear no retention, unless the annualrent had been paid within the year. *2do.* That all these Parliaments were rescinded. It was replied, That the not-payment of the annualrent, within the year, could only be understood when the annualrent was due to be paid in these years; but this being a conditional obligation, that payment should be made upon delivery of a letter of slains, and a remission, which not being obtained, nor offered within these years, the debtors were not *in mora*; and, though these acts be annulled, yet there is a *salvo* of the rights of private parties arising thereby. It was duplied, That there was no distinction of obligations in the acts, whether pure or conditional, and that the condition did only affect the principal sum, and not the annualrents. The Lords found, That the condition affected both; and that retention was due, seeing the debtor was not *in mora*, in payment of the annualrent.

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1672. November 15. MASTER of FORRESTER *against* The EARL of CALLANDER.

GENERAL Ruthvin, late Earl of Bramford, being forefault in the time of the late troubles, was, by a special Act of Parliament, *in anno* 1662, restored; which act was superseded to be extracted, while, by order of Parliament 1667, it was ordered to be extracted. Whereupon the Lady Forrester, who had right by disposition from her father, and the Lord Forrester her husband, obtained