

1692. *December 1.* JOHN ANDERSON of Dowhill *against* WILLIAM ANDERSON.

WILLIAM ANDERSON, residenter at London, having given in a bill of suspension of a decreet-arbitral pronounced by two of the Lords of Session, to whom it was first referred, and then submitted, in favours of John Anderson of Dowhill, Provost of Glasgow, ALLEGING it was pronounced without the year, and he was grieved by it; and he being ordained to find caution, and offering a disposition in supplement, and his oath; the Lords refused to pass the bill, seeing the charger refused to discuss on the bill, alleging when he had a second decreet, he would be no nearer his payment, if he got no caution; and seeing the said William had *medio tempore* disposed all his effects to one Brand, who refused to be cautioner for him.

Some of the Lords inclined to pass the bill, on his finding caution thus far, to refund all the expenses Dowhill either has or shall be at in the discussing, and he giving his oath that his disposition was not fraudulent, but necessary and onerous: and the Lords being equally divided on this, the President's vote carried that the bill of suspension should be refused, unless he simply found caution for the whole sums decerned.

*Vol. I. page 526.*

1692. *December 2.* SCOT of Vogrie and his Assignee *against* SIR DUNCAN CAMPBELL and the EARL OF BALCARRAS.

SCOT of Vogrie, and his assignee, charging Sir Duncan Campbell of Auchinbreck, and the Earl of Balcarras, his cautioner, for a sum contained in their bond; they suspended, that by the act rescissory of fines and forfeitures in 1690, Auchinbreck having been forfeited, had the privilege of the remit to the committee of Parliament there named, how many years annual-rent they would give him down, and how long they would stop execution, either personal or real. And they not having yet determined, the Lords could not proceed.

ANSWERED,—They were content on payment to find him *Cautionem Mutianam*, that if the commission of Parliament should give down either of principal or annual-rent, they should refund accordingly; but that it was most iniquitous on that pretext, which might never take effect, to keep up both the principal and annual-rents that were owing between the forfeiture and the restitution.

The Lords would not meddle; but finding the act of Parliament run copulatively, that they behoved not only to be forfeited persons who sought the benefit of that clause, but also dispossessed of their effects; therefore, they ordained it to be tried how long he was out of possession; but in regard a forfeited person is presumed also dispossessed, therefore, they burdened the pursuer to prove, that either he, or some for his behoof, possessed for these years. See a parallel case in Stair, *24th June 1664, Duke of Hamilton*; even as now the Lords, in such cases, supersede to give answer till the time to which the present current Parliament is adjourned. For to supersede indefinitely, till the Parliament or commission should sit, were hard to delay *sine die*.

*Vol. I. page 526.*