

prising being deduced before Northesk granted the said bond : And, by the said back-bond, he was obliged only to pay the said sum in case he should get payment ; and he was so far from getting payment of the said sum, that having comprised, not only upon the said bond granted to Margaret Carnagie, but for other debts, exceeding far the said debt due to her ; yet got payment of neither.

It was REPLIED by the suspender ; That he was not concerned to dispute whether he got payment or not ; but the charger having disposed the comprising as to the said sum, without the consent of the said ——— Carnagie and her children ; and without the burden of the said back-bond, it was equivalent as if he had got payment : it being all one upon the matter, as to the interest of ——— Carnagie, whether Northesk had got payment of the said sum, or had disposed the comprising in so far as concerns the same.

The Lords, in respect of the conception of the bond granted by Northesk, found, that either he should procure a retrocession of the said bond, and comprising thereupon *pro tanto* ; or that he should pay the damage and interest sustained by the suspender's cedent, through Northesk's granting of the right of the said bond and comprising to Hattoun : And, in that case, that the damage and interest should be presently liquidated ; and, being liquidated, should be a ground of compensation.

Glendoich, *Reporter.* Monro, *Clerk.*

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1675. *January 12.* LETTER by the LORDS of SESSION to the KING.

MY Lord Lauderdale, his Majesty's secretary, having written to the President, concerning the above-mentioned process betwixt Captain Gordon and the Swedes, anent the ship called the Wine Grape ; that the Swedish envoy had made application to his Majesty, and had represented, that the decret against the strangers was carried but by two votes : and had given in a list to his Majesty of those that were for, and against the said decret ; with divers reasons against the same. It was thought fit that a letter should be drawn to his Majesty, containing the grounds whereupon the said decret proceeded : Which being done by those who were appointed by the Lords ; some of the Lords did object against the same,—That they did mention the Lords indefinitely to have given the said decret ; whereas his Majesty was informed of the contrary ; and the information was true : and therefore it was desired it should bear, that, upon the votes of the major part, which is usual in all cases, the decret was pronounced : Specially, seeing the said letter did contain the grounds of, and did assert the justice of the said decret : so that these who had voted against the same, could not belie themselves, and put under their hand the contrary of what they had voted. And albeit, in all judicatories, even in Parliament, what is done by the plurality doth overrule and conclude the dissenters, so as to submit to the same ; yet, they are not obliged to maintain, or assert the justice of a sentence and act, that they had been against in their judgment and vote.

It was, notwithstanding, carried by a plurality, That, without the amendment foresaid, the letter should be subscribed by all the Lords ; the President having promised to write to my Lord Lauderdale, what was truly *res gesta* when the

said decret was given : And, upon that assurance, some of the Lords declared, when they subscribed, that they subscribed not their own sense, but the sense of the Court : And though they were concluded, as said is, yet they were not convinced.

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1675. February 5. BROWN against GILVIE.

A PERSON, being pursued for an annuity of money, did claim the benefit of retention, conform to the late Act of Parliament :

But the Lords found, That albeit retention was granted for relief of debtors of their taxation, and that the debtor was alike concerned as to the end fore-said, whether he paid the annualrent, as the *usura*, and profit of a principal sum, or as annuity due upon a personal bond ; yet the Act of Parliament mentioned only annualrents : And being, as all Acts of Parliament, *stricti juris*, specially such as are *correctoriæ juris communis*, it could not be extended beyond the letter of the law.

Nevoy, *Reporter*. Gibson, *Clerk*.

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1675. February 5. DUKE of MONMOUTH against EARL of TWEEDDALE.

THERE being a transaction betwixt the Duke and Duchess of Monmouth, and the Earl of Tweeddale, whereupon a discharge was granted by the said Duke and Duchess to the said Earl, with consent of their curators ; which was also superscribed by his Majesty, taking burden for the Duke and Duchess ; with an obligation that they should ratify after majority : the said Duke and his Lady pursued a reduction of the said discharge, upon a reason of minority and lesion.

It was ALLEGED, That all parties having interest were not called ; *viz.* The officers of state for his Majesty's interest : seeing his Majesty was so much concerned, that, if any thing were evicted from the defender, his Majesty would be liable for the same.

The Lords REPELLED the defence ; without prejudice to his Majesty's advocate to appear for his interest, if he thought fit.

Stathurd, *Reporter*. Gibson, *Clerk*.

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1675. June 17. COLLEGE of ABERDEEN against The TOWN of ABERDEEN.

DOCTOR Reid having, by his testament, left his books to the College of Aberdeen, to be kept by a bibliothecare : and, having left for a patrimony and salary to the bibliothecare, the sum of 6000 merks ; and having named Mr Robert Dounie, his own relation, to be bibliothecare ; and, in case of his refusal, hav-