

recovered, so, on the other hand, it were absurd to put them to adjudge any man's lands who they suspected stood obliged to their debtor. But the foresaid general clause salves both these inconveniencies. *Vol. I. Page 643.*

1694. *November 15.* BAILLIE of JERVISWOOD *against* The DUKE of GORDON.

RANKIELER reported the Duke of Gordon's bill of suspension against Baillie of Jerviswood, *1mo.* That he was not bound to receive him by precept of *clare constat* but with that clause *salvo jure meo.* *2do.* That, having got his lands, both property and superiority, erected into a regality in the late times, he must design his lands as lying within his said regality. ANSWERED to the *first*,—That the Duke ought to condescend on his right; especially since it is insinuated that he thinks the gift of forfeiture is yet sufficient, notwithstanding of the act rescissory. To the *second*,—The regality being obtained the time of the charger's forfeiture, it must fall with it. REPLIED,—No superior is bound to condescend; because there may be casualties of the superiority, or recognitions. And, *2do.* He having impetrated the erection, not as proprietor, but as superior, it must subsist.

The Lords sustained both the reasons; and ordained the charter to bear both the clause of *salvo jure*, and mention that they lie in such a regality.

*Vol. I. Page 643.*

1694. *November 15.* ROBERT ROW *against* CAPTAIN JOHN CAIRNS, Brewer.

THE Lords sustained the reason of suspension,—That the Sheriff had committed iniquity in dividing his oath, whereby he declared he was indeed trusted for Row's sum as well as his own, but that he did not become debtor for it, nor undertook to do more diligence for it than for his own; and, though he had him once under caption, yet he did let him go, because Row refused to bear part of the charges; and therefore turned the decret into a libel, unless he would subsume that the debtor turned insolvent afterwards, and that he was in a better condition then; and if he had been detained he might have gotten his money. For the Lords considered he was but a *nudus depositarius*, and had lost much more of his own, and did undertake no diligence; and therefore suspended the letters, unless they would prove damage and prejudice in his dismissing him in manner foresaid.

*Vol. I. Page 643.*

1694. *November 15.* RAMSAY of IDINGTON and FAIRHOLM *against* The LORD MORDINGTON and his CREDITORS.

IN their concluded cause it came to be debated, Whether the contract betwixt old Dr Sibbald, and Anna de Malvairn, his wife, proved that their separation was by a judicial sentence, seeing it only bore it *narrative*; and if their asser-