

No 48.

no action, because the sasine was given by warrant of the charter and precept granted by the said Lord Maxwell, who, after the charter and precept, and before the sasine, was forfaulted; and so the sasine behoved to fall, the author's right falling, and the King by the forfaultry having become in the right, which was an impediment to the lawfulness of the sasine. It was *answered*, That the forfaultry was rescinded *ab initio*, which made the sasine to convalesce; which depended upon the preceding charter and precept.—THE LORDS repelled the exception, in respect of the reply of rescission of forfaultry, and found, that there needed no other warrant to that sasine, nor no new sasine after the forfaultry; but that the said sasine, taken by virtue of the said precept, was sufficient, notwithstanding the intervening forfaultry, in respect of the rescission thereof as said is.

Act, *Hope & Cuningbame.*Alt. *Nicolson & Oliphant.*Clerk, *Gibson.**Durie, p. 4.*1626. *July 27.*FINLAYSON *against* Her TENANTS.

No 49.
Found in conformity with
the above.

ISOBEL FINLAYSON being infest by umquhile Gray her husband, who was infest in certain cottages in Coldingham by the King, as vacant in his hands, by the dishabilitation of John Stuart, son to the umquhile forfaulted Earl of Bothwell, provided to the priory of Coldingham; and, by the annexation of the said priory to the Crown, pursues removing against some tenants, possessors of the said cottages; wherein the said John Stuart compearing for his interest, *alleged*, that the said act of dishabilitation and annexation of the said priory, which was the ground of the pursuer's husband's infestment, was rescinded and reduced by a posterior act of Parliament, with all infestments depending thereon, and are declared null; and the said act ordained the nullity to be received by exception or reply, and therefore that infestment cannot be a title, whereupon either to pursue or defend. This exception was found relevant, and instantly proven, by production of the said act of Parliament, and so absolvitor was given; albeit it was *replied*, that the defenders called were tenants to the pursuer and her husband, to whom they paid mail and duty; so that their possession could not be inverted until they were orderly removed by the excipient, and the said act could not prejudice the pursuer and her husband, who was not called thereto; likeas, the act of Parliament *salvo jure cujuslibet*, works so far for the pursuer, that by any other act in favours of a particular person, a third party's right never called cannot be prejudged; which replies were repelled, and notwithstanding thereof, the exception sustained.

Act, ———.

Alt. *Craig.*Clerk, *Hay.**Durie, p. 229.*