

1622. *December 10.* The EARL of ROTHES *against* GORDON of Hallhead and Cushny.

IN an action of reduction pursued by the Earl of Rothes, against Gordon of Hallhead and Cushny;—the Lords found a particular Act of Parliament, made in favours of the Earl of Rothes, (whereby all deeds done since a certain time therein mentioned to any person in the Earl's prejudice were annulled,) to be a sufficient Act, and valid to make any infestment, albeit preceding the Act, being done since that time designed in the Act, to be null: albeit it was alleged, that these private Acts could not be of force to take away parties' private rights lawfully acquired, who were not specially called to that Act, to hear their rights annulled, and who, if they had been called, would have maintained the lawfulness of their rights, that the same could not be taken away; for it was alleged, that all such particular Acts, which are purchased by parties, upon private or wrong information, ought not to prejudice the king's good subjects, who had not faulted, nor had been called nor cited thereto: but that the same was understood, and should be understood, when any question arises thereupon, *salvo jure cujuslibet*; which clause and tacit condition is comprehended and understood to be in all such Acts. Which allegiance was repelled by the Lords, seeing they found they could not be judges to annul an Act of Parliament which was clearly conceived and had no difficulty in the interpretation: but the said Act standing, it was not within their judgment to decide, whether it was justly or unjustly statute; but if any wrong was therein, it ought to be tried by Parliament. Neither could that clause, *salvo jure cujuslibet*, be understood to be comprehended in that Act; seeing that clause would be contrary to the tenour of that Act, and would destroy the same *in totum*, and so could not subsist together.

*Act.* Hope. *Alt.* Nicolson and Burnet. Gibson, *Clerk.* *Vid.* 27th November 1621, E. Nithsdale; 25th July 1623, E. Nithsdale; 23d July 1624, Lo. Herreis; 23d July 1625, Pat. Whitelaw; 27th July 1626, Finlason.

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1623. *January 29.* JAMES STUART, Commissary of Dunkell, *against* LORD GRAY.

IN an action pursued by Mr James Stuart, Commissary of Dunkell, against the Lord Gray, for pointing of the ground for an annual-rent owing divers years preceding the decease of umquhile the defender's father, who was alleged to have died at a certain term libelled;—the Lords found, that that summons ought to abide continuation, because it bore the time of the defender's father's decease, which behoved to be proven: and so consisting *in facto*, that the summons ought to abide continuation; it being an action of pointing of the ground, pursued by Mr James Stuart, as assignee-constitute to the bygonies of that annual-rent, preceding the Lord Gray's decease, by him who had right to the annual rent.

*Act.* M'Gill and Lawtie. *Alt.* Aiton and Cheap.

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