

1611. *March 2.*The OFFICERS of STATE *against* ROBERT COWTIE, and Others.

THE Kings Treasurer and Advocate, pursuing Robert Cowtie, and certain others of Dundee, for contravening the act of Parliament made against usurers, for taking more profit in the year, than ten for the hundred of silver lent to them to the particular persons libelled, it was *alleged* by the defenders, that the LORDS could not be judges to the trial of the contravening of the act of Parliament, and to the conclusion of the summons, anent the confiscation of their goods, and punishment of their persons; because by the act of Parliament *in anno* fourscore seventeen, cap. 251. pursuit was ordained to be deduced before the Justice; which allegiance the LORDS repelled, and found themselves Judges. Next it was *alleged*, that the late act of Parliament will have no effect, because it never came in execution, and observation; but by the contrary, the hail subjects took ordinarily twelve for the hundred, so that *communis error fecit jus*. And as the acts of Parliament made against players at the golf and foot ball, and against merchants sailing in winter, are ineffectual, because they were never received in use or custom, but the direct contrary of them being observed, therefore the contravening thereof cannot infer any pain; likeas the LORDS of Session by diverse of their interlocutors, sentences, and namely betwixt the Laird of Rankeillar, and Forrat, and William Naper, and Margaret Moubray, and others, have authorised to take twelve in the hundred. To this it was *answered*; that the general disuse and universal of an act of Parliament, took not the strength of the same, nor exempted them from punishment, and that this act should not be reputed approbate, because usury was condemned by acts of Parliament, *anno* fourscore seven, *anno* fourscore seventeen, *et in anno* sixteen hundred years; and as for the LORDS' decreets, they are only given upon penalties, and not in any actions where the party and the Kings Advocate by himself, pursue the transgressors of the act of Parliament; and in case the LORDS had decided against the act of Parliament, which no man will suppose, yet their decision would not take away the force from the act of Parliament, but that decret might be reduced in Parliament.

*Fol. Dic. v. 1. p. 495. Haddington, No 2174. p. 900.*

1623. *February 22.* KING *against* PRIOR of ECCLES.

THE LORDS granted a bill of advocation from the high commission, of an action concerning the title of a benefice contentious betwixt a person presented by the King, and another presented by the Prior of Eccles.

*Fol. Dic. v. 1. p. 495. Haddington, MS. No 2783.*

No 60.

The Lords sustained themselves Judges, competent to a contravention of the act of Parliament against usury.

No 61.