

not crave the benefit of the act, because he had not found caution for the principal and annual, conform to the said act ; for his naked bond of corroboration without caution, could not be interpreted security.

No. 4.

The Lords found the suspender behoved to give security either by caution or infestment.

Stair, v. 1. p. 209.

1665. February 11. EARL OF LAUDERDALE against LORD OXFORD.

The Earl of Lauderdale's goodsir, being infest in the barony of Musselburgh, which is a part of the abbacy of Dunfermline, by a gift from King James *in anno* 1584, excepted by the act of Parliament for annexation of kirk-lands *in anno* 1587, and repeated in the act of Parliament 1593 ; his father got a gift *in anno* 1641, and Oxford got another the same year from the King as heir to Queen Anne his mother, who had an heritable disposition of the whole lordship of Dunfermline from the King after Lauderdale's first right. Lauderdale obtained conformation of his first and subsequent rights in the Parliament 1661, declaring all rights formerly granted by the King since Lauderdale's first right void, which ratification bears an express provision, That it shall not be prejudged by the act *salvo jure cujuslibet*. The defender alleged absolutor *in hoc judicio possessorio*, because his father was infest by the King *in anno* 1641, and by virtue thereof in possession twenty years before this pursuit ; and as for his ratification, the defender not being called thereto, it cannot take away his right, being founded *super jure communi* until the pursuer insist in reduction, in which case the defender shall answer, but is not obliged to answer *in hoc judicio* ; and as for the exception of the act *salvo jure*, it is against the common law ; and the act *salvo jure* is posterior without repeating that exception. The pursuer opposed his ratification, excepting the act *salvo jure*, which being done upon the King and Parliament's certain knowledge, upon consideration of Lauderdale's prior right ; the Lords cannot be judges to reduce the sentence and statute of Parliament, as Durie observes to have been found in the case of the Earl of Rothes and John Stewart of Coldingham, (See Appendix.) The defender repeated his answer, and for these decisions opposed the tenor of the act *salvo jure* 1633, and repeated 1661, whereby the Lords are ordained to decide in the rights of private parties, according to law, without respect of ratification or other private statutes in favours of particular persons such as this, which being after these decisions, clears and enlarges the power of the Lords. The pursuer opposed his ratification and exception of the act *salvo jure*, which bears expressly, That it should stand as a public law, and so was no private statute mentioned in these acts *salvo jure*.

No. 5.
Effect of exceptions from acts *salvo jure*.

The Lords having considered the case, and that such exceptions from the act *salvo jure* were of dangerous consequence to the lieges, they ordained the parties before answer, to dispute the point of right as if such an exception of the act *salvo jure* had not been granted, but they thought that defence upon a possessory

- No. 5. judgment being but a point of form, whereby the rights of parties were not competent by exception or reply, the Parliament might dispense therewith, and also might reponne parties as to the matter of prescription, or *quoad minor non tenetur placitare*; but if without these and such the pursuer had a prior valid right. The Lords were loath to enter upon the case of the exception of the act *salvo jure*.

Stair, v. 1. p. 267.

1749. July 27. The LORD BOYD *against* The KING'S ADVOCATE.

No. 6.

A disposition by a father to his eldest son after the date fixed in the Clan Act sustained, the estate being settled on the son as heir by his father's contract of marriage, and the disposition burdened with debts, of which there were considerable on the estate.

James Lord Boyd claimed the estate of his father the late Earl of Kilmarnock, as disposed to trustees for his use, 10th August, 1732, whereon infeftment was taken in September following.

Answered, The disposition is ineffectual, by the act *primo* Geo. I. called the Clan Act, whereby all conveyances in favour of the granter's children, made after 1st August, 1714, by any person who should be convicted of the high treasons specified in that act, should be void and null, except deeds for just and onerous causes, otherwise instructed than by the writings themselves.

Replied, When this statute was under the consideration of the Court in the case of Invercauld, it appeared that some of the clauses thereof were calculated for the then conjuncture of affairs, and some for a longer endurance; and it were absurd to imagine that this clause, which annuls deeds from 1714, on the presumption that the preparations were making for that rebellion by the persons afterwards concerned in it, should extend to annul all deeds done thereafter, by persons who might happen to engage in any other rebellion, though there was no view thereof at the executing the deed. Besides, this disposition is with the burden of debts, and these are condescended on sufficient to exhaust, or so near exhaust the estate, as conjoined with the obligation the Earl came under by contract to leave it to the heir of his marriage, made a sufficient just and onerous cause.

Duplied, A disposition to an heir with the burden of debts is not an onerous cause. The King will take, subject to the debts, and in this case there is a valuable reversion.

A condescendence of debts being made and instructed,
The Lords sustained the claim.

D. Falconer, vol. 1. No. 89. p. 96.