

ALLEGED, That that act was totally in desuetude, and tacks subjoined to wadsets have constantly been reputed valid notwithstanding that act of Parliament. ANSWER, Though persons have bruiked tacks without controlment past memory of man, yet the act of Parliament standing unrepealed, and it never having been questioned if sic tacks were valid or not; unless it were alleged, That by former decisions *in foro contradictorio* tacks of this kind were sustained, there is no reason why the act of Parliament should not be kept, considering the equity and justice of it.

The Lords reduced the tack and revived the force of that old act of Parliament. Which was well decided.

Act. Lockhart.

Alt. Maxwell.

Advocates' MS. folio 55.

1666. *February 15.* LORD BORTHWICK *against* _____

IN this case of my Lord Borthwick with some of his wadsetters, found, though by the act of debtor and creditor the wadsetter is bound to count for the duties of lands more nor pays him his annualrent, yet that the wadsetter is not bound thereto from the date of the act of Parliament, but from the time the debtor requires the creditor to accept of security for his money; at which time the creditor may declare himself either to retain his possession or to quit it. And found that paragraph of the act conditional.

Item, found a party could not renounce the benefit introduced in their favours by a public law, before the law was made.

Act. Cunyghame. *Alt.* Trotter.

Advocates' MS. folio 56.

1666. *February 15.* ALEXANDER *against* THOMAS COULL.

IN this case of Alexander and Thomas Coull, found, that where one is in possession of lands, though by a right thereafter reduced, yet that the possessor is not liable for the mails and duties but from the decret of reduction, and not from the time of the citation: though the decret bear the right to have been from the beginning, and in all time coming null; which is only *stilus curiæ*.

Act. Yeoman. *Alt.* Dinmuire.

Advocates' MS. folio 56.

1666. *June 20.* JEAN CUNYGHAME *against* CUNYGHAME of Robertland.

IN a case betwixt Jean Cunyghame, as donater to Sir David Cunyghame of Robertland's escheat and liferent, against this Robertland, found, That though Sir David had his wife and family in Scotland, yet being furth of the country,

and being denounced at the market-cross of Edinburgh, pier and shore of Leith, and registrate ; his liferent escheat fell to the King.

Act. Mackenzie. *Alt.* Cunyghame.

Advocates' MS. folio 56.

1666. *July 12.*

Anent PRESCRIPTION.

ONE being infeft in an annualrent, and having obtained decret for pointing of the ground, against the tenants, without calling of the heritor ; this decret was sustained as a sufficient interruption of the prescription of the right, though the heritor was not called.

Advocates' MS. folio 56.

1666. *July 12.*

Anent NOTARS.

CO-NOTARS subscribing a bond, or assignation, or writ of importance, *diversis temporibus*, and not *unico contextu*, it is null *ipso jure* ; and it was contraverted if the subscription by one notar may stand good for L.100, and the other's subscription for another L.100, though at divers times.

Act. Lockhart.

Alt. Sinclair.

Advocates' MS. folio 56.

1666. *July 12.*

Anent ESCHEAT.

ONE being condemned by an assize for receipt of theft, and the Judge having mitigated the punishment to L.100 Sterling, to be paid within twenty-four hours ; and being so paid, one takes the gift of his escheat, and craving declarator, it came to be debated if the verdict of one assize could be a ground of escheat, and if a judge might mitigate the punishment which is imposed by law, *vid.* hanging, and confiscate his moveables, or irrogat a mulct, in lieu thereof ; and if the king may be prejudged of that casuality of escheat by this mitigation of the pain. *CONTENDED nemo debet subjici duplici pœnæ* ; and the pain being declared by the judge to be L.100 Sterling, his moveables cannot now be confiscated, nor escheat declared, on that ground.

This the Lords repelled, and found no Judge Ordinary could mitigate the punishment irrogat by act of Parliament, and therefore declared the gift.

Act. Lockhart.

Alt. Cunyghame.

Advocates' MS. folio 56.