

1668. February 29. Duke HAMILTON against MAXWELL of Monreith.

THE Duke of Hamilton, as Collector General of the taxations, having charged Maxwell of Monreith, he suspends upon this reason, and *alleges*, That he had imparked and inclosed a ten merk land since the act of Parliament 1661, anent the inclosing of grounds, by which, all lands to be inclosed thereafter, are to be free of all public burdens. It was *answered*, That the act of convention was posterior, and had no such exception, but, on the contrary, took away all former exceptions. It was *answered*, That an act of Parliament cannot be derogated or abrogated by an act of convention.

THE LORDS found the reason relevant, notwithstanding of the act of convention.

*Stair, v. 1. p. 539.*

No 11.

Taxation not found due for inclosed grounds, conform to act 1661.

1668. July 21. Sir JOHN WEMYSS against CAMPBELL of Ednamplē.

SIR JOHN WEMYSS having charged Ednamplē for maintenance due *in anno* 1648, he suspends on this reason, That upon consideration of the burning of his house in the time of the troubles, he got an exemption and discharge from the King and Parliament *anno* 1651. It was *answered*, That that Parliament was rescinded, and the charger had a commission to uplift all maintenance *in anno* 1648 from the beritors, notwithstanding of any exemptions granted by these pretended Parliaments and their Committees. The suspender *answered*, That the act rescissory has an express reservation of all private rights acquired by authority of these Parliaments for the time; and so this exoneration of his becoming his private right, falls not by the act rescissory; and as to the act of Parliament, and commission to the charger, it must be understood *salvo jure*, and cannot take away the suspender's anterior right acquired.

Which the LORDS found relevant, and suspended the letters; and found that the suspender's exoneration was not taken away, either by the act rescissory, or by the act and commission.

*Stair, v. 1. p. 556.*

No 12.

Effect of the act rescissory, relative to an exemption from the tax of maintenance.

1669. January 22.

The COLLECTOR-GENERAL of the TAXATIONS against The MASTER and SERVANTS of the MINT-HOUSE.

THE Master of the Mint did suspend for him and his servants, on this reason, That it was their ancient privilege to be free of taxations, for which they produced certain gifts by former Kings of Scotland and decreets of the Lords. It

No 13.

The Officers of the Mint were exempted from taxation.

No 13.

was *answered*, That the act of Convention gives only exemption to the Members of the College of Justice, and discharges all former privileges and exemptions. It was *answered*, That acts of the Convention must be understood *salvo jure*, which takes place even in acts of Parliament; 2dly, They produced a late gift granted by the King *in anno* 1668, exempting the Master and Servants of the Mint from all taxation, imposed or to be imposed, which is past the Exchequer and Privy Seal, so that the King, who hath right to the taxation, might discharge the same to whomsoever he pleased.

THE LORDS, in respect of the new gift, did exempt the Officers of the Mint, and suspended the letters.

*Stair, v. 1. p. 589.*

1669. January 23. Sir JOHN WEMYSS *against* FARQUHAR of Towley.

No 14.  
Who liable  
for the tax of  
maintenance.

SIR JOHN WEMYSS having charged Farquhar of Towley for the maintenance of his lands due *in anno* 1648, he suspends on this reason, That by the act of Parliament 1661, appointing this maintenance to be uplifted by Sir John Wemyss, singular successors are exempted, *ita est*, in one part of the lands he is singular successor to Sir Robert Farquhar, of another part, he has a disposition from his father, for sums of money particularly expressed in the disposition. It was *answered* to the *first*, That the exemption is only in favour of singular successors who had bought lands the time of the act, *ita est*, Sir Robert Farquhar's disposition is after the act; neither doth it appear, that a competent price was paid therefor; and as for his father's disposition, though prior to the act, yet the narrative thereof betwixt father and son will not instruct the debts, unless it be otherwise instructed, nor can it be made appear to be a just price.

THE LORDS found that the exemption could not extend to singular successors acquiring after the act; for if at that time the lands were in the hands of him who was heritor *in anno* 1640, or his heirs, nothing *ex post facto* done by them can prejudice the right constituted by the act, which doth not bear an exemption to singular successors who should acquire, but only to those who had acquired.

They did also ordain the defender to instruct the cause onerous of his father's disposition; but would not put the suspender to dispute the equivalence of the price, unless it were instructed that the dispositions were simulate, there being a great latitude in prices, according to the pleasure of parties.

*Stair, v. 1. p. 591.*