

No 19.

and passed from his compearance before sentence: But it was urged, if this were once allowed, this in posterior cases might be used to reverse the most formal and solemn decreets, on the pretence that it might have been better pleaded and illustrated, and more said for the King than was; and the true time of restraining these exorbitant privileges is under good Kings, as Pliny says to Trajan *in panegyrico*, *Et quæ summa tua gloria est, sæpe vincitur fiscus, cujus causa nunquam mala est nisi sub principe bono.* The Lords split in the vote, being six against six; and by the chancellor's vote, his Majesty was found to have the privilege of being reponed by the said act of Parliament against Sir Thomas' decret, though contended to be *in foro*.

This is the first remarkable decision on the said act of Parliament 1600, now during the space of 98 years; and, if further urged, may have greater consequences. See PERICULUM:

*Fol. Dic. v. 1. p. 524. Fountainhall, v. 1. p. 597. 725. 753. & p. 819.*

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1694. *January 25.*

The EARL of LEVEN *against* The COUNTESS of WEMYSS and her TENANTS.

No 20.

PHILIPHAUGH reported the Earl of Leven against the Countess of Wemyss and her tenants, for their teinds, whereof he has procured a tack from the King as fallen into his hands, through the abolition of episcopacy. *Alleged*, She had a prior right by a charter from King Charles, bearing *cum decimis*, and though the King had not then any right to them, yet now it devolving in his person, must accresce to validate and fortify her charter. *Answered*, That the teinds have been cast in without adverting, and the negligence of the King's Officers cannot prejudice him; Neither knew he what he was then giving away, nor had he right to them; and the *jus accrescendi* cannot take place here, against a formal right given on knowledge, and after the teinds were legally returned to him. THE LORDS preferred the Earl of Leven's right.

*Fol. Dic. v. 1. p. 524. Fountainhall, v. 1. p. 598.*