

STATUTE.

1661. December 6. JEAN DALMAHOY *against* HAMILTON of Binnie.

JEAN DALMAHOY charges Alexander Hamilton of Binnie for a tack-duty of 2000 merks, due to her for her life-rent lands. He suspends, on this reason, That he has taken the benefit of the late act of Parliament between debtor and creditor; and this sum being above 2000 merks, stands thereby suspended for six years. The charger answers, *Non relevat*, because the act extends not to rents or tack-duties of lands, albeit exceeding £.1000; but only to borrowed sums, and other money bearing annual-rent, which, in recompence of that forbearance, are accumulated with the principal sums.

The Lords found the act not to extend to rents or tack-duties, and therefore repelled the reason.

Stair, v. 1. p. 65.

1662. July 29. ALEXANDER HAMILTON *against* THOMAS HARPER.

Alexander Hamilton pursues a removing against Thomas Harper, who alleged, Absolvitor, because the pursuer invaded and beat the defender, in the Session-house, during the dependence of this cause; and therefore, by the act of Parliament 1584, Cap. 219. renewed 1592, Cap. 173. the pursuer *cadit causu*, and the defender must be assolzied.

The Lords having considered the said acts of Parliament, and finding thereby that the invasion must be cognosced in a criminal process, competent to the Justices, and must be found summarily by an inquest;

The question was, whether beating, without effusion of blood, was such a criminal fact? because it seems to be but a riot; and next, whether the Lords would take probation of it themselves, or if it behoved to be recognosced by the Justices?

The Lords found the defence relevant, for the act of Parliament anent violence in the King's presence, or in the Session-house, when the Session is sitting, make such deeds to incur death; and therefore, whether they would assign a term-

No. 1.
Act 1661,
Cap. 62.

No. 2.
Acts 1584,
Cap. 219.
and 1592.
Cap. 173.

- No. 2. to the defender to prove, that in the mean time he might proceed criminally, before the Justice, and instruct the defence by the sentence of the Justice, or whether they would receive the probation themselves, they resolved to hear the parties upon it.

Stair, v. 1. p. 138.

1664. June 24. DUKE and DUCHESS of HAMILTON *against* SCOTTS.

No. 3.
Effect of a
commission
appointed by
act of Par-
liament.

The Duke and Duchess of Hamilton being charged for payment of a sum due to umquhile Sir William Scott of Clerkington, and assigned by him to his four children, alleged, that by act of Parliament commission was granted for deducting so much of his creditor's annual-rents as should be found just, not exceeding eight years, and therefore there could be no sentence against him as to that till the commission had decided. The pursuers answered, That these annual-rents were not due for the years during the time the Duke was forefault by the English, which ended *in anno* 1656, and they insist but for the annual-rents since that year. It is answered for the Duke, That albeit he had paid many of these years annual-rents by force of law, then standing, yet that could not hinder the deduction, but that he would have repetition or deduction in subsequent years. The pursuers alleged he behoved to seek the heir for repetition, and could not deduct from them.

The Lords, in respect of the commission, would not decide nor discuss the allegiance anent the year's annual-rent, but superseded to give answer till the commission had determined, even till seven years after the forefaulture, to make up these that was paid before.

In this process compareance was made for Sir Lawrence Scott, the heir and executor-dative, who alleged that there were 2,000 merks of the sum belonged to him, because his father's assignation to the children contained an express division of their shares, which was so much less than the whole sum assigned. The children answered, They opposed their assignation, which bore expressly an assignation to the whole sum and bond itself; and albeit the division was short, it was but a mistake of the defunct, and cannot prejudice the assignees.

Which the Lords found relevant.

Stair, v. 1. p. 205.

1664. July 7. JOHN MILN *against* HOME.

No. 4.
Act 1661.
Cap. 62.

John Miln, mason, having charged Sir James Home of Eccles for payment of a sum of money due by bond, he suspended, and alleged that he had the benefit of the act betwixt debtor and creditor as to personal execution, seeing he had paid a year's annual-rent, and had consigned a bond of corroboration, joining the rest of the annual-rents to the principal. The charger answered, The suspender could