

either the one charter were produced, or an act of adjournal made of old authorising the said old regality.

No 10.

Fol. Dic. v. 1. p. 524. Haddington, MS. No 667.

1612. June 19.

DOUGLAS *against* TUSCHILAW.

No 11.

ALL lands lying within a Stewartry are the King's property, and no lawful infeftment can be granted but in feu for augmentation of the King's rental; and albeit lands, which pertained heritably to any man before the Lordship or Stewartry, came in the King's hands and were annexed, will remain with the erection holden of the King, as he held the same before; yet, if these lands come in the King's hands, by forfeiture, the cognition or resignation *ad perpetuam remanentiam*, they will become annexed property, and may not thereafter be disposed but in feu for augmentation of the King's rental; and the possessions of all such lands will be subject to the Stewart's jurisdiction, and the acceptance of an original infeftment of lands confessing the same to lie within the Stewartry, will make it null if it be granted otherwise than in feu.

Fol. Dic. v. 1. p. 523. Haddington, MS. No 2460.

1622. July 11.

E. ROTHES *against* GORDON.

No 12.

IN the action of reduction pursued by the Earl of Rothes against Gordon of Halhead, the LORDS found, that an act of Parliament, made in *anno* 1515, ratifying a paction made betwixt George Earl of Rothes and his Majesty's treasurer in *anno* 1509, and annulling all infeftments granted of the barony of Balnebreich, or any part thereof, after the said paction, was sufficient to take away the defender's infeftment. He was not called to see it reduced in Parliament. It was also found, that the act made in his Majesty's last Parliament in *anno* 1621, anent *salvo jure cujuslibet*, was only extended to ratifications granted in his Majesty's own time, and not in his predecessor's time; as also, that the King's revocation is not extended to acts of Parliament made in his minority, unless they be *per expressum* mentioned in the revocation.

The King's revocation was found not to be extended to acts of Parliament made in his Majesty's minority, unless they were expressly mentioned in the revocation.

Fol. Dic. v. 1. p. 524. Haddington, MS. No 2648.

1669. February 25.

The KING'S ADVOCATE *against* The EARL of MORTON and VISCOUNT GRANDISON.

No 13.

THE King's Advocate pursues a reduction of the rights of the Earldom of Orkney and Zetland, granted by the deceased King Charles I. or by this King

Annexed property cannot be alienated.

No 13.

himself to the Earl of Morton or Viscount of Grandison, and produces a contract betwixt the King and the Earl of Morton in *anno* 1643, and a charter following thereupon, whereby the lands are granted and disposed blench, with several extraordinary privileges, as having right to the bullion and other customs of goods imported there; and also a charter *anno* 1646 by the King to the said Earl, relating to a dissolution in the Parliament 1644, containing a *novodamus*, and bearing also blench; there is also produced an infeftment granted to the Viscount of Grandison, and after the said infeftment, a ratification by the Parliament 1661. In the which ratification, there is contained a dissolution of the Earldom of Orkney and Zetland in favours of Grandison, wherein also the dissolution formerly made in favours of Morton in *anno* 1664, is particularly rescinded, upon this consideration, that neither the King nor his Commissioner were present in the Parliament 1644, and that his annexed property could not be disposed nor dilapidate without an express act of his own, ratified by Parliament. After this dissolution in favours of Grandison, the King granted no new infeftment to Grandison; the advocate having holden the production satisfied with the writs produced. Morton and Grandison compeared not at all, and some others having public rights from them being called, did also pass from their compearance, and submitted to the King's favour; and compearance being made for some of the vassals holding of Morton, they were not admitted, because they produced no writs to instruct their interest; so the Lords proceeded to advise the reasons of reduction, which were upon these points; *imo*, That by the law, and several particular acts of Parliament, the patrimony of the Crown being the lands and customs annexed to the Crown, might not be disposed by the King, unless the samen (upon weighty motives and considerations) had been dissolved by his Majesty and the Parliament, and dissolutions made after infeftments are not valid, Parliament 1597, cap. 236.; and by the 234th act of that same Parliament, the annexed property cannot be set otherwise but in feu-farm; so that the Earldom of Orkney being annexed to the Crown, by the annexation produced in process, and the contract and charter 1643 being before any dissolution, is absolutely null; and the infeftment in *anno* 1646, albeit relating to a dissolution in *anno* 1644, yet no such dissolution is found in the records; and though it were, it is rescinded in the ratification in favours of Grandison in the Parliament 1661, upon so weighty a reason as the King or his Commissioner not being present; and, because the Parliament 1644 is rescinded by the Parliament 1661, wherein, albeit there be a *salvo* of private rights, yet that cannot reach to the patrimony of the Crown, especially seeing in that same Parliament 1661, his Majesty having revoked all *deeds* done by him or his father since 1637, which, by the laws of the nation, he might not do to the derogation of his honour or crown, the Parliament has ratified the same revocation as to all rights granted since 1637, contrary to the laws and acts of Parliament preceding 1637; and likewise by an express act of Parliament it is provided, that no ratification in Parliament shall prejudice the

Crown or supply a dissolution, and that none of the King's customs (which are also annexed) can be effectually gifted.

No 13.

THE LORDS found these reasons relevant and proven, and reduced all the rights produced before the dissolution *anno* 1661, since which there is no infertment granted.

Fol. Dic. v. 1. p. 524. Stair, v. 1. p. 614.

* * This case is reported by Gosford :

February 28.—IN the reduction and declaration pursued against the Earl of Morton and others, for reducing the right of Orkney and Zetland, and especially a contract of alienation made to the Earl's grandfather in *anno* 1643, with the right made to the Viscount of Grandison to the behoof of the Earl of Morton and his heirs, by the King in *anno* 1662; the libelled reasons being upon the acts of Parliament King James II. and King James VI. anent the annexed property, that it could not be disposed but by decret of Parliament and after dissolution, and could only be disposed to be holden feu, wherein the rights foresaid made to the Earl of Morton were defective; the defenders having all passed from their compearance, the LORDS having advised the reasons and declarator, did sustain the same for reducing the right of property. But, as to all the bygone rents of the lands which had been intromitted with, and for which decret was craved conform to the said acts of Parliament, they did delay to discern, seeing the defenders were not in *mala fide* to possess; and that the act of Parliament, as to bygone intromissions, had never been in observance. And the King's advocate having declared, that he insisted *primo loco* in the reduction and declarator of property and upon the acts of Parliament and laws concerning the annexation and conditions thereof; the decret was ordained to be extracted.

Gosford, MS. No 126. p. 47.

1751. July 16. KINCAID and Others *against* The KING'S ADVOCATE.

No 14.

ALEXANDER KINCAID bookseller, and others, tradesmen in Edinburgh, claimed out of the estate of the late Lord Lovat, payment of their accounts furnished to him; in which action these questions arose, Whether they could claim payment for furnishings made after 24th June 1745, when the estate was vested in the King by statute? And, *2dly*, Whether they could claim interest for furnishings before or after that time?

An accopt of furnishings to a forfeited person, after his estate had been vested in the Crown not sustained; and interest refused on accounts contracted before.

Pleaded for the Claimants; They were in *bona fide* to furnish Lord Lovat, who had not engaged in the rebellion, but was to appearance a loyal subject; and after the rebellion in 1715, a claim of Mrs Pitcairn on the estate of Win-