

1672. November 15. MAJOR BIGGAR *against* The LAIRD of NIDDRIE.

IN a suspension raised at Niddrie's instance against the Major, of a decret recovered at his instance, for payment of the principal sum and annualrents contained in a bond, to which he was assigned by the Laird of Wolmet, upon this reason, That he ought to have retention of the annualrents preceding the year of God 1650, conform to the Act of Parliament, allowing retention of annualrents *in anno* 1645 :—

It was ANSWERED, That the Act of Parliament was conditional, in case of payment of the annualrents punctually every year, whereas the suspender had been deficient for many years.

It was REPLIED, That the bond and decret being conditional,—until the condition was purified, the suspender was not bound to make payment ;—*viz.* The delivery of a letter of Slains for the mutilation of Wolmet.

It was DUPLIED, That the Act of Parliament was general and without distinction, and allowing retention only where annualrents were duly paid.

The Lords did find the reasons relevant ; and that the Act of Parliament could only be interpreted to be of *debita pura*, where nothing impeded payment. But, as to conditional obligations suspending payment, it could not be the meaning of the Parliament that the debtor should not have retention until the fulfilling of the condition, at which time the debt became simple, and the debt was payable, the debtor not being *in mora* till that time.

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1672. November 15. EDWARD RUTHVEN, SON to the LORD FORRESTER, *against* The CREDITORS of The EARL of BRAMFORD.

THERE being a bill given in, in name of the said Edward, making mention, that, by an Act of the last session of Parliament, it was ordained that his name should be inserted in the decreets to be extracted, which were obtained before the Lords of Session, at the instance of the Countess of Bramford and the Lord and Lady Forrester, against the Earl of Callender and Others.

It was ALLEGED for the creditors of the Earl of Bramford, as likewise for the creditors of the Lord Forrester, That that Act of Parliament being only given in relation to a reduction of the Countess of Bramford's right, by virtue of a contract betwixt her and the Lady Forrester, as having right to the Earl of Bramford's debts, to which there was no person interested called but the said Countess ;—it could be no warrant for extracting decreets in his name, in prejudice of any other person ; and so fell under the Act *salvo jure* ; and could not prejudice the creditors of Bramford, or the Lord Forrester, who had contracted with them in contemplation of his lady's right by the Act of Restitution.

It was REPLIED, That special Acts of Parliament, restoring against forefaultures, can never be questioned by any person, upon pretence that they were not cited, neither can they fall under the Act *salvo jure* ; as hath been found formerly by the Lords, in the cases of the Earl of Rothess, and of John Stewart of Coldinghame. And albeit the said decreets were against the law for the