

*excusat.* The Lords found, That any revocation by the testament was only conditional, and became void by the Earl's returning and making use of the other testament; and therefore repelled the defence in respect of the reply, and had no necessity to determine anent the confirmation and error alleged.

*Vol. I, Page 760.*

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1671. *July 28.* HADDEN *against* The LAIRD of GLENEGIES.

HADDEN, being donatar to the marriage of the Laird of Glenegies, pursues declarator for the avail thereof. The defender alleged Absolvitor; because, by an Act of Parliament 1640, it was declared, that whosoever was killed in the present service, their ward and marriage should not fall; *ita est*, Glenegies was killed, during the troubles, at the battle of Dumbar. It was replied, That the present troubles could not extend further than to the pacification *anno* 1641; after which there was peace till the end of the year 1643. *2dly.* The Parliament 1640, and all the Acts thereof, are rescinded. It was duplied, That the troubles were the same, being still for the same cause; and that the Rescissory Act contained a *salvo* of all private rights acquired by these rescinded Acts. It was answered, That this was a public law, and the *salvo* was only of particular concessions by Parliament to private parties. The Lords found, That the Act 1640 reached no farther than the pacification by which the troubles then present were terminated. The Lords demurred in this case, upon remembrance of a process before them, at the instance of the Heirs of Sir Thomas Nicolson against the Heirs of the Laird of Streichen, upon the gift of Streichen's ward to Sir Thomas, who died the time of the war, being prisoner by occasion of the war, and after pacification; that they might have seen what they had done in that case; but did not get the practick; and the parties being agreed, they decided in manner foresaid. Wherein this was not proponed nor considered,—that the foresaid Act was always esteemed an exemption after the pacification, during the whole troubles; and no ward for marriage was found due that time, though many fell during the war; and, if it had not been so esteemed, the same motives that caused the first Act to be made, *in anno* 1640, would have moved the renewing thereof after the pacification. And, no doubt, the King and Parliament, *anno* 1650, before Dumbar, would have renewed the same for encouragement in so dangerous a war, if it had not been commonly thought that the first Act stood unexpired.

*Vol. I, Page 768.*

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1671. *November 30.* ANTHONY HAGUE of BIMERSIDE *against* MOSCROP and RUTHERFORD.

ANTHONY Hague, as having a gift of all goods and gear belonging to umquhile Mr William Hague, his goodsire, pursues his debtors for payment: who alleged No process; because the sums in question are heritable; and the pursuer's gift can only extend to moveables, proceeding upon Mr William's being called before the justice *in anno* 1633, for some scandalous speeches against the