

1683. *January.* ANDREW AIKMAN *against* LEWIS CANT, &c.

FOUND that infestment, and possession upon a bond anterior to the granter's rebellion, attained *in cursu rebellionis*, either voluntarily or by diligence, before expiring of the year and day, was preferable to the liferent-escheat, as being a prior public right.

Page 164, No. 593, [2d.]

---

1683. *January.* MAXWEL of NETHERYETT *against* STUART of SHAMBELLIE.

STUART of Shambellie having suspended, upon compensation, a decret for £300, obtained against him by Maxwel of Netheryett, and having, after an interlocutor sustaining the compensation, but before the pronouncing of sentence, beat the charger; he, the charger, insisted upon the Act —, Parl. 14, James VI, and craved the letters might be found orderly proceeded. Alleged for the suspender, That it was only the meaning of the said Act that the invader should not be allowed to propone any thing after the invasion; but it were hard to cut him off from compensation already sustained. Answered, The charger did industriously give the first provocation by injurious words, knowing the suspender to be a hasty man. Replied, The suspender must be cut off from his reasons of suspension; for the Act of Parliament operates as much as a discharge of the debts suspended on, so as they can never be the ground of any action in time coming, or sustained as a defence or reason of suspension in this process, and has not simply the effect of an absolution *ab instantia*, but extinguishes the litigious subject. The Lords having found, upon advising the proof, That though the charger uttered first some injurious words, the suspender gave the first blow with his staff, and so was the first aggressor: They found the pursuer's reply relevant, and that the suspender was cut off from his grounds of compensation founded on, and could not use them in any other process. *Vide* No. 934, [Strachan against Tolquhoun, January 1687.]

Page 254, No. 902.

---

1683. *January 6.* MR RIVEN and his CREDITORS *against* PATRICK KER.

IN a competition betwixt Edward Ruthven's Creditors and Patrick Ker, who had adjudged a right of annual-rent out of my Lord Callender's estate, belonging to Riven the common-debtor;—it was alleged for the rest of the creditors, That Patrick Ker could not have the fifth part more than his principal sum and annual-rents; because, 1. The subject of his adjudication being only an annual-rent, which, upon requisition will produce ready money; and so the reason in the Act of Parliament for allowing an additional fifth part, *viz.* that the creditor is forced to take land for his money, doth not hold. 2. The debtor offers payment of the sum adjudged for, within the legal of five years, which must cut off the claim of fifth part more; as redemption within the legal would