

No 101.

THE COURT, in general, were of opinion, that, although bills of this kind ought not to be passed, except where very good and sufficient reasons are shown; yet, their powers of reviewing the sentences of the Commissioners, arising from their inherent and constitutional jurisdiction, were not excluded by this statute.

THE COURT 'passed the bill.'

Lord Ordinary, *Ankerville.* Act. *Crosbie.* Alt. *M'Laurin.* Clerk, _____
Fol. Dic. v. 3. p. 342. Fac. Col. No 81. p. 156.

1780. *August 10. and 1781. June 22.*

COUPER, &c. *against* SIR JOHN OGILVY.

No 102.

IN a case where certain tradesmen in Montrose had been adjudged under the comprehending act, on account of their having been concerned in a mob; although the bill of suspension was at first refused, the COURT afterwards, upon due consideration, passed it, and ordered the complainers to be liberated, as having been unduly adjudged. See APPENDIX.

Fol. Dic. v. 3. p. 342.

1781. *July 3.* PATRICK HOME *against* ELIZABETH and JEAN WOOD.

No 103.

The Court found that they could not review a decree of exception, pronounced under authority of the act 5th Geo. I. chap. 22, relative to forfeitures.

UPON the attainder of George Home of Wedderburn for his accession to the rebellion 1715, Robert Wood, portioner of Whitsome, one of his vassals, applied to Exchequer, in terms of the 1st Geo. I. chap. 50, commonly called the Clan-act, and obtained a charter from the crown; which right was afterwards, 10th September 1719, confirmed by a decree of exception, in terms of the act 5th Geo. I. chap. 22.

Under this last statute, a claim to the whole estate of Wedderburn was likewise entered by Ninian Home, who, in virtue of certain adjudications, &c. subsisting in his person, previously to the forfeiture, was found, 16th September 1719, to have right to the property of the said lands and others mentioned in the exceptions. And it was also found, 'that the said George Home had no right or title to the said lands and others aforesaid, upon the 24th day of June 1715 years, (the retrospective date of the statute) nor at any time since; and that the public has no right nor title to the said lands and others, by the attainder of the said George Home.'

In the 1729, Ninian Home expedite a charter of the estate; and, a few years afterwards, disposed it to the heir of the family, who, in the 1746, called Wood and some others of the vassals in a process of reduction, declarator, and non-entry. This process, however, was never brought to a conclusion, till Mr

Patrick Home, having succeeded to the estate of Wedderburn, revived it against Wood's representatives; for whom it was

Pleaded in defence; However valid the decree obtained by Ninian Home may be, so far as the public is concerned, it can have no effect in a question with those who are not parties to it. Neither can it invalidate the previous decree, in virtue of which Robert Wood and his successors have, ever since, held the lands of Whitsome as vassals of the crown.

The claims upon which these decrees proceeded, were both in Court at the same time, and they were both opposed by the same counsel, on the part of the public. Yet no notice was taken of any inconsistency between them. Mr Ninian Home neither opposed Wood's claim, nor attempted to set the decree aside after it was pronounced. The reason of all this is obvious. The trustees for the public were happy that an opportunity offered to save the family of Wedderburn. But they, as well as Mr Home himself, were sensible that, so far as a private party was concerned, the plain rules of law were not to be departed from; nor Mr Wood's claim, made under the authority of an express act of Parliament, to be refused without injustice.

Answered; The statute under which Mr Ninian Home claimed, did not require that the vassals should be made parties. It was a public law, which was to take effect in the course of a few months, and to which the attention of all concerned was called forth. Mr Wood, therefore, ought to have opposed Mr Home's claim, as far as it affected his right; and his not doing so, leaves it to be presumed, that he was satisfied of the justice of that claim.

Mr Home, on the other hand, had no title to oppose Wood's claim, till his own was sustained; and then it appeared unnecessary to bring it under challenge; because the decree in his favour having declared, that George Home of Wedderburn had no estate in him, which could be forfeited, it followed as a necessary consequence, that the decree, excepting this superiority from the supposed forfeiture, was altogether ineffectual.

The defenders also endeavoured to show, that Ninian Home's claim was ill-founded; but the Court were of opinion, That they had no power to review a decree of exception pronounced under the authority of the statute above mentioned; and, therefore, adhered to the Lord Ordinary's judgment, which was 'In respect that, by the decree in favour of Mr Ninian Home in the 1719, it is declared that the crown, the defender's author, had no right to the lands and estate of Wedderburn, (of which the superiority of Whitsom was a part) by the attainder of George Home; therefore, sustains the reasons of reduction.'

Lord Ordinary, *Stonfield*. Act. R. *Dundas*. Alt. A. *Abercrombie*. Clerk, *Tait*.
L. *Fac. Col. No 63. p. 102.*