

- No. 4. vassal of his superiority by way of decret-arbitral, and the superior having assigned the price for onerous causes, and being afterwards forfeited before disposing the superiority, and the vassal having claimed and got the superiority upon the Clan Act as vassal; the Lords found him liable in the price, and that his claiming the superiority as vassal, and not upon the decret-arbitral, could not prejudice an onerous assignee.

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1742. *February 25.*

M'KENZIE of Fairburn *against* OFFICERS of STATE.

- No. 5. FORFEITED estates held feu of the Crown, and afterwards purchased from the trustees, hold blench from the Crown, and are free from all feuduties by the act 6th Geo. I., notwithstanding the act 4th Geo. I.

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1748. *November 4.*

ALEXANDER HENRY GORDON *against* OFFICERS of STATE.

- No. 6. SIR WILLIAM GORDON of Park, pursued a reduction of a sale of lands on account of a prior minute of sale betwixt the seller and him, from which the Lord Ordinary had assoilzied. Sir William reclaimed, and the defender had answered; but before advising, Sir William was attainted of high-treason; whereupon the defender, on a diligence, called the Officers of State, and intimated the process specially to the Lord Advocate, who declined to meddle or to support the petition. At advising, we doubted whether we could decide in the cause, because the Officers of State were not properly in the field so as to give a judgment against them; but in respect that the Lord Advocate declined to support the petition, we found it was fallen, and allowed the Lord Ordinary's decret to be extracted.

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1749. *July 18.*

CLAIM, THOMAS DRUMMOND of Logie, of the Estate of Perth.

- No. 7. IF the attainted person shall not surrender before a certain day limited, if the person die before that time, the attainder is void and null, and the Court of Session, as having authority to determine claims on forfeited estates, have power to judge of it, though the attainder be by act of Parliament, in the same way as they must judge of a surrender; and the condi-

tion was thought to be suspensive and not resolute, therefore the estate was found not forfeited by the attainder of the deceased James Drummond, commonly called Duke of Perth, he having died before 12th July 1746.

No. 7.

1749. *July 25.*

LORD BOYD'S CASE.

No. 8.

THE estate of Kilmarnock being surveyed by Exchequer, Lord Boyd claimed on a disposition and infestment in 1732, reserving the Earl's life-rent and certain powers. The objection was, that that disposition was null and void by the Clan Act, which annuls all tailzies and conveyances whatsoever after 1st August 1714; and as we had found that act still in force in favour of superiors, 14th December 1748, (*vide SUPERIOR,*) so must it be also against such conveyances. The claimant's counsel said they could prove a sufficient onerous cause; and as we were greatly diffculted as to the general point, we ordered a condescendence to be given in of the onerous cause, 20th June 1749, which was done, and consisted of burdens equal indeed to the value;—and after hearing parties procurators, (as some of the Court thought the Clan Act was expired both as to superiors and disponees, particularly the President,) the question was put in general, and we unanimously sustained the claim. Lord Advocate appealed, and the case was heard at the Bar of the House of Lords, 27th and 28th March 1751; after which, Lord Chancellor stated three material points in the cause; *1st*, Whether the Clan Act was or was not temporary? *2d*, Whether Lord Kilmarnock was or was not attainted of the treasons in that act mentioned? *3d*, Whether the disposition 1732 was onerous or not? He thought the discussion of the first point might rather be reserved for some other cases that might come before them; but I am told, that by his way of reasoning he seemed to think it temporary. The second he thought unnecessary, because that objection had not been made for the claimant before us; and as to the third, he thought the disposition onerous; and if the House was of that opinion, he proposed that the judgment should be, to declare that the debts chargeable on the estate, and on the respondent to pay, being equal, or thereabouts, to the value of the estate at the time that the disposition was executed; the disposition was therefore onerous, and the interlocutor complained of should therefore be affirmed; which the House agreed to. *Vide TAILZIE. Vide SUPERIOR AND VASSAL.*