

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 condescence 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.*