

No. 12. 1750, Feb. 15. DUKE OF GORDON *against* THE OFFICERS OF STATE.

AFTER two days hearing at the Bar we found, as we did 14th December 1748, in Invercauld's case, that the Clan-act was in force after the last Rebellion till it was in part repealed by 21st Geo. II. 2dly, That the superiors were entitled to the benefit of that act, though the attainder was in general for levying war, and not in the very words of the Clan-act. 3dly, The Duke having taken a decret of maills and duties in this Court within the six months, in terms of the condition of the act, we repelled the objection that all these decreets were declared void by the vesting act, 24th January 1750.

15th February.—Other objections, besides these decided 24th January, were made to this claim ;—that the claimant was not superior to the forfeiting person. The case was, that Sir Evan Cameron was infest held of George Duke of Gordon, and passing by his son John, who was attainted for the Rebellion 1715, disponed it to his grandson Donald, the forfeiting person, who was infest in his precept *a me aut de me* ; and the last Duke of Gordon, Alexander, as he could not receive any disposition from his father, because Papist, nor succeed to him as heir, Duke George gave him bonds for great sums, for which he adjudged, and was thereon infest, and in 1717 or 1718 gave a charter of resignation and confirmation to Donald, whereon he was infest. Duke Alexander died in 1729, and 1731 or 1732 the claimant Duke Cosmo served heir in the estate to his grandfather, passing by his father Duke Alexander ;—therefore the objection was, that if Duke Alexander was superior to Donald, then this Duke was not, and had made no title to Duke Alexander's charter of adjudication, which is still *in hæreditate jacente* of him ; and if he was not superior, then the forfeiting person never was vassal to Duke Alexander or the claimant. The case was argued at the Bar two days, and many answers were made, particularly 1st, that supposing Donald had been but apparent-heir in the lands, that was sufficient to forfeit them ; and if the claimant had no other right than as apparent-heir to his father, he would be entitled to the benefit ; that no more was meant by the word "holding," or "holden," in the act, than that the lands forfeited hold of the claimant, his predecessors, or authors ; that this act introduces a new species of treason, adhering to the Pretender, which could not be limited to persons only who were invested in their estates ; and quoted another clause in favours of heirs of ward-vassals killed in the King's host, and mentioned the case of Treasons in the Palatinate of Durham, and copy-holds where the overlord has the same benefit, whether the vassals is entered or not : and as to the other, that the last Duke being Papist, his infestment was void and null *quoad* the next Protestant heir, though good as to every other person, that vassals and others taking rights *bona fide* were safe even against the Protestant heir, but he needed not make any title to it, and could not reduce it, because he was heir in it himself ; and that even without the specialty of Popery, it has been found that the heir making a title to the investiture, needed not serve to collateral rights, &c. &c.

\* \* See the Note subjoined to the text.

No. 13. 1751, July 25. LORD BOYD *against* THE VASSALS OF THE ESTATE OF LINLITHGOW.

THESE vassals had most of them their charters from the family of Linlithgow, with hist clause in the *reddendo*, "doubling the feu-duty the first year of the entry of each