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14th December 1748, in Invercauld's case, that the Clan-act was in force after the last Rebellion till it was in part repealed by 21st Geo.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 decreet 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 infeft 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 infeft 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 infeft, and in 1717 or 1718 gave a charter of resignation and confirmation to Donald, whereon he was infeft. 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 infeftment 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

heir or assignee." The estate was forfeited and purchased by the York-Buildings Company, and a long lease of it from them is by progress come into the person of Lord Boyd, containing power to enter vassals and singular successors. The disponees of the old vassals, upon the late act of Parliament, charge Lord Boyd to enter them; and he presented a bill of suspension, on this ground, that the chargers were liable to pay a year's rent for the entry; and in answer, the vassals contended that they were only liable for the double of the feu-duty. Replied: That assignee can only mean the first assignee; 2dly, such a clause is not effectual against him a singular successor. Several were of opinion of the first, to which I could hardly agree, but was clear on the second; and we all agreed to pass the bill,—5th July.

25th July.—This case came first before us 5th instant, when we passed Lord Boyd's bill of suspension of the charge, founded on the late act of Parliament for entering these singular successors; and the same question is now again repeated in discussing the suspension on the bill. We found Lord Boyd not bound to enter the chargers without payment of a year's rent. Justice-Clerk was for the interlocutor on both points.

No. 14. 1752, Feb. 5. KINCAID *against* MRS HAMILTON GORDON, &c.

KINCAID held his lands from Cunningham of Boghan, which are now by Cunningham's creditors held of Gabriel Napier feu, as come in place of the Viscount of Kilsyth, who held them of the Crown. Kincaid served heir to his father, and upon the act 20th Geo. II. for taking away ward holding, &c. charged Mrs Hamilton, the apparent-heir of Boghan, to enter him, and took an instrument against him; wherein her answer was, that she did not represent the defunct, and had renounced to be heir; and then he presented a bill of horning against Gabriel Napier, the remote superior, which he opposed; and thereupon two questions arose. 1st, Whether the act extended to the case of apparent-heirs in the superiority? 2dly, If it extended to remote superiors, and if we could supply it? (Lord Elchies's reasoning on the case is subjoined to the text.)

No. 15. 1752, July 22. GRAHAM OF FINTRY *against* KINLOCH.

FINTRY feued a mill to Sir James Kinloch, who assigned the precept of sasine to Alexander his second son, who was thereon infeft, and thereafter attainted of high treason, and the mill surveyed by the Barons of Exchequer, and Fintry on the Clan-act claimed as superior, and produced the feu-contract with Sir James Kinloch, with an extract of Alexander's sasine, but wanted the assignation of the precept by Sir James to him, which we thought necessary to instruct Alexander to have been his vassal in the mill;—and we allowed him to prove the tenor of that assignation, and of the principal sasine; though the President doubted if that was competent; but we would not give an incident diligence for proving it, for we thought a summons and separate process necessary, as is usual in improbations.

No. 16. 1753, Feb. 16. SINCLAIR *against* SINCLAIR of Rattar.

ULBSTER having right by progress to the superiority of Rattar's estate, took a charter from the Crown, and (to multiply votes at elections) conveyed the precept to the different