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annulled; yet it was true he had sued it out, which at the time was the proper diligence for getting possession.

'THE LORDS found the act to subsist, and repelled the objections.' See a case between the same parties, 15th Feb. 1750, *voce* PAPIST.

*Fol. Dic. v. 3. p. 236. D. Falconer, v. 2. No 125. p. 141.*

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The creditors of vassals forfeited for the rebellion 1715, not obliged, by the vesting act, to enter claims, to affect their debtors estates falling to the superiors by the clan-act.

1757. June 22. STEWART of Blairhall *against* STEWART of Appin.

STEWART of Blairhall pursued Stewart of Appin for a bond of pension, granted in the year 1714, by the predecessor of Appin, to the predecessor of Blairhall.

Appin's *defence* was, That his ancestor had gone into the rebellion 1715: That the Duke of Argyle, his superior, had taken the advantage given him by the clan-act, and entered to his vassal's estate, though he restored it several years afterwards, burdened with the payment of debts due upon it: That Stewart of Blairhall had not made any claim upon this debt before the 24th of June 1717; and yet, that by the vesting act of the 1st of George I. cap. 40. all superiors and creditors were obliged to enter their claims upon the forfeited estates before the 24th June 1717, otherwise to lose them; by which neglect Blairhall had lost his right to the debt pursued on.

*Answered* for Blairhall, The necessity of creditors claiming before the 24th June 1717, related only to estates vested in his Majesty by the vesting act 1st George I. cap. 50. and not to estates vested in superiors by the clan-act 1st George I. cap. 20. By the clan-act, it was enacted, 'That if any subject holding lands of a subject superior in Scotland, shall be attainted of high treason, his lands, held of any subject superior, shall recognosce, and return into the hands of the superior; and the property is thereby consolidated with the superiority, in the same manner as if the same lands had been by the vassal resigned into the hands of the superior, *ad perpetuam remanentiam*.' By this act, which was made the session before the forfeited estates were vested in the Crown for the use of the public, the estates of vassals attainted of high treason, were, upon such attainder, *ipso facto*, vested in the subject-superiors, and became their property, as if they had been resigned by the vassal, *ad perpetuam remanentiam*; and, therefore, the estate of Appin was, upon Appin's attainder, fully and absolutely vested in the Duke of Argyle, his superior. In the next session, the vesting act was passed, by which the estates of attainted persons were vested in the Crown, for the use of the public; and those who had any claim out of such estates, were appointed to give in their claims, in the time and manner prescribed by the act; but then, as by the first mentioned act, the estates of attainted vassals were already vested in the loyal superiors, it was necessary to make an exception of such estate from the general vesting clause in this last act; for as these estates had been formerly vested in the superiors,

they could not, by this last act, be vested in the Crown; and therefore there is the following clause inserted in the vesting act: 'Provided always, that nothing in this act shall extend to, take away, alter, or diminish, any right, title, benefit, or advantage whatsoever, which any superior, vassal, &c. are, or may be entitled unto, by virtue of an act for encouraging all superiors, &c. or repeal, alter, or make void, any of the pretensions or things in that act contained, any thing herein to the contrary notwithstanding.' By this act, therefore, the superior's right, derived from the clan-act, was no wise altered; consequently the estates vested in them by that act were not by this act vested in the Crown; and in consequence of that again, no claim could be entered upon them, in terms of the vesting act.

'THE LORDS repelled Appin's defence.'

Act. *And. Pringle.*

Alt. *Ferguson.*

*J. D.*

*Fac. Col. No 27. p. 48.*

1757. July 6.

CHARLES FRASER of Inverallachy *against* His MAJESTY'S ADVOCATE.

IN 1740, Simon Lord Lovat executed a disposition of certain lands in favour of Charles Fraser of Inverallachy. In 1742, a charter was taken out, and in 1743 infeftment followed. Charles Fraser redispensed the same lands to Lord Lovat, to be holden of him for payment of L. 6 Scots yearly, retaining thereby the superiority.

Lord Lovat was attainted of high treason 19th March 1747.

Charles Fraser, agreeable to the direction of the act of Parliament of George II. vesting the estates of certain traitors in the Crown, entered a claim for the superiority of the lands dispensed to him; and also claimed the property of the same lands, in terms of the act 1st George I. called the clan-act, as being a subject-superior who had continued peaceable and dutiful.

The claimant was examined upon oath, and gave this account of his right: 'That he paid no value for the lands mentioned in his claim: That he had expressed to Lord Lovat a desire to have a qualification to vote for a member of Parliament in the county of Inverness, which his Lordship said he would give him: That, some time after, he received a letter from Lord Lovat, giving him notice, that he had made a disposition in his favour: That the disposition was never delivered to the deponent, nor in his hands, nor did he ever see it: That he gave no orders with regard to the charter or sasine, nor paid the expense of either, which was done, he believes, by Lord Lovat himself; but that he gave orders to his agent, to take the advice of counsel as to the proper manner of framing his qualification, and making it effectual: That he paid the expense of this, and produced the signed opinion of his counsel, and the

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Disposition of a superiority in order to give a vote, upon which charter and infeftment followed, but no other delivery, found not good against the Crown's right by forfeiture.