

1680. December 15.

GORDON *against* The WADSETTER of the LANDS of BARSCOB.

No 53.
Forfeiture in
absence by
the Justices
being ratified
in Parliament,
found effect-
ual without
declarator.
See No 50 p.
4719.

GORDON of Troquhen being donatar to the forfaulture of the Laird of Barscob, pursues a wadsetter of the rebels to remove, and for mails and duties, who *alleged* no process, because the forfaulture was not declared *via ordinaria et de communi consuetudine*; all forfaultures being done by the justices, and not by the Parliament, must be declared, and this forfaulture was by the justices in absence, and was the first that was ever so sustained; and albeit there be an act of Parliament ratifying the same, yet it must be *salvo jure*, and doth only bear, 'That these forfaultures by the justices in absence against the rebels, in *anno* 1666, shall be as valid by the justices as if the rebel had been present;' but, though they had been forfault by the justices when present, they needed a declarator. It was *answered*, That this act being a general law, and printed and published as such, and not upon the motion of any private person, it falls not under the act *salvo*; and this act bears not only, 'That these forfaultures, whereof this is exprest as one, shall be as valid as if the forfault person had appeared before the justices,' but bears also, 'That it shall be as valid as if the forfaulture had been in Parliament.'

In respect whereof the LORDS sustained process without declarator.

Stair, v. 2. p. 816.

* * * Fountainhall reports the same case :

IN the case of Roger Gordon of Troquhen against Cannon, it was *alleged*, That the gift of forfeiture produced by him as his active title was not sufficient for mails and duties, unless it were declared by a decret of general declarator; seeing it was only a decret of forfeiture pronounced in the justice court, and not in Parliament. *Answered*, The doom of forfeiture is ratified *ex post facto* in Parliament by the act 1669. *Replied*, The design of that act was to give the justices power to forfeit in absence, and not to dispense with the other formalities. 'THE LORDS found it needed no general declarator.'

Fountainhall, v. 1. p. 122.

1686. March.

SIR JOHN HARPER, Superior to Coltness *against* The KING'S ADVOCATE, &c.

No 54.

A SUB-VASSAL being forfeited, and his lands annexed to the Crown by act of Parliament, the treasurer appointed a factor to uplift the mails and duties; and there being a multiplepounding raised by the tenants;