or liege-man of two different States, (though that certainly does not hold, for a naturalization in one State does not exeem the person from the allegiance he owes to the State where he was born,)—and the pursuers were forced to give up both the old Roman and feudal laws, only said that this last was local, and varied in different countries, and that succession was a natural right which could not be refused without some statute or custom. The defenders admitted that aliens may purchase and even testate on moveables, (as they also may do in England, though they strictly adhere to the law that strangers cannot succeed in heritage) and quoted an old statute for it, Stat. Gul. Cap. 30. The Court unanimously found, that an alien could not by the law of Scotland succeed to heritage without being naturalized, and found that the pursuer is an alien,—for it was disputed, that since his grandfather was originally a Scotsman, though both his father and he were born in Germany and never were in Scotland, yet he was a Scotsman, which we repelled without any difficulty.

I should also have noticed, that the pursuer founded on the former judgment with Major Leslie not as *res judicata*, for the parties were different, and this point never pleaded. But as the Court knew that the Count was a foreigner, it was *pars judicis* to notice it though not pleaded. I should also have noticed, that the defenders quoted for them Craig in his book *De Successione*, which is much more positive against aliens than his treatise *De Feudis*, though the purpose of his book was to maintain King James's right of succession to the Crown of England.

FORFEITURE.

No. 1. 1734, July 5. JAMES LORD OXFORD'S FORFEITURE.

THE Lords adhered. My reason was, that the Clan Act provides that no conviction or attainder shall hurt or prejudice the right or diligence of any creditor, whereby I thought the case was to be considered as if there had been no attainder.

No. 3. 1740, July 8. EARL of SUTHERLAND *against* ROSS.

THE Lords found, that for preserving the pursuer's casualty of recognition, it was necessary for him to enter a claim thereof before the Commissioners appointed to enquire into the forfeited estates, and that notwithstanding his right as superior of the lands subject to the recognition by the act 1*mo* Geo. for encouraging superiors, &c.—and found that no sufficient claim thereof was before them, and therefore found that he cannot now insist in this declarator of recognition. The first carried by a good majority, but the second only by the President's casting vote.—24th June 1741 Adhered.

No. 4. 1740, Nov. 14. HUME of Billie *against* HUME of Ninewalls.

NINEWALLS being by decreet-arbitral bound to pay 4000 merks to Hume of Wedderburn for the superiority of some land which Wedderburn was decerned to dispone to

him, Wedderburn assigned the 4000 merks, which by progress is now on Ninian Hume's person;—and being afterwards forfeited before he had disponed the superiority, Ninewalls got the superiority decerned to him as vassal upon the Clan Act;—and being sued for payment of the price of the superiority, his defence was that Wedderburn had not conveyed it to him. The case was long argued on the Bench. Arniston thought that if the superiority could after the forfeiture have been claimed on the decreet-arbitral, that he would be liable although he took it on the Clan Act, but he thought that there lay no claim in law either to property or superiority of lands after forfeiture upon personal deeds or obligements. The President was of the same opinion, and that if any claim had lain upon the minute of sale while the price was not paid, the claimant must have paid the price to the Crown, or its donatar, whether superior or vassal; nay he thought that if Ninewalls had paid the price he might not only have taken the superiority on the Clan Act as vassal, but also (if Wedderburn had not other creditors to exhaust his estate) might have claimed back the price out of his estate. But the Court thought that on the statutes concerning forfeitures there lay a claim upon the decreet-arbitral for the superiority, both on the Clan Act and Act of Enquiry; that that claim was not prejudged by the forfeiture, or by the gift to superiors and vassals, and that his claiming on the gift as vassal could not prejudge the onerous assignees to the price,—and therefore found him liable.

No. 5. 1742, Feb. 25. M'KENZIE *against* OFFICERS of STATE.

WE all agreed that by the act 6*to* Geo. II. purchasers of forfeited estates formerly held feu of the Crown were to hold them blench and free of all feu-duties, and that notwithstanding the blunders in the act 4*to* Geo. II. But our difficulty was, whether the Crown intended to give away these feu-duties? which was no difficulty in law but in equity. But Arniston told us he assisted in framing the act 6*to* Geo. II. that it was intended to free the purchasers of these feu-duties, and to correct the blunders in the former act, which removed our difficulties, and we found in favours of the purchasers. 25th February 1742. The Lords Adhered, and refused a bill without answers.—(27th Nov. 1741.)

No. 6. 1748, NOV. 4. ALEXANDER GORDON *against* OFFICERS OF STATE.

THE late Sir William Gordon raised reduction against Gordon of Muiresk of a sale of some lands bought by him from George James Gordon, on pretence of a prior minute of sale betwixt the pursuer and the said George, and Balmerino, Ordinary, assoilzied and decerned. Sir William reclaimed to us by petition and additional petition, which were both answered,—but before advising Sir William was attainted of high treason,—and the defender upon a diligence cited the Officers of State, and intimated the process to Lord Advocate, who declined to meddle in it. This day at advising the Lords doubted whether they could advise the bill and answers because Sir William was attainted, and the Officers of State not properly in the field to give any judgment against them? and the President at last proposed, that in regard they were called on the diligence and the process intimated to Lord Advocate, who declined to support the petitions, to find that they were fallen, and to allow the decreet pronounced to be extracted.