

S E C T. VII.

Effect of Attainder of the Institute, or Heir of Entail.

No 59.

An heir of entail was declared to be attainted, if he should not surrender within a certain time. During the currency of that time, the Lords, on a petition for a substitute, ordained the entail to be recorded.

1746. June 25. EBENEZER OLIPHANT Supplicant.

JAMES OLIPHANT of Gask, with consent of Laurence Oliphant his eldest son, in the year 1719, made a tailzie of the estate of Gask.

Ebenezer Oliphant, goldsmith in Edinburgh, one of the substitutes, gave in a petition on the 4th instant to have it recorded, which was ordered to be intimated to the first institute and substitutes prior to the petitioner.

This was done to Gask at his dwelling-house; but before the report of the intimation, an act of attainder was past, in which he was comprehended.

The petition was ordered to be intimated to the Crown Lawyers, who objected to the recording, for the Crown had gained a *jus quæsitum* by the act, in consequence whereof Gask stood attainted from the passing thereof, if he should not deliver himself up within the time prescribed.

THE COURT were of opinion, That as it might happen the attainder might never take effect by his surrender, and either being acquitted on trial, or dying without trial, in either of which cases the recording would certainly be effectual to save the estate to the heirs against posterior contractions, the tailzies ought to be recorded, and ordered accordingly.

Pet. D. Græmc.

Alt. Sollicitores.

Fol. Dic. v. 3. p. 233. D. Falconer, v. I. No 123. p. 151.

No 60.

An heir of entail who was prohibited from alienating, contracting debt, or altering the succession in prejudice of the substitute heirs, being attainted for high treason, it was found, that the estate

1750. November 16. CAPTAIN GORDON against The KING'S ADVOCATE.

SIR JAMES GORDON tailzied his barony of Park to himself; and after his decease, to William Gordon his eldest lawful son, and the heirs male of his body; which failing, to the heirs male of his own body; with other substitutions, and the ordinary clauses.

Sir William Gordon the first heir granted an annualrent out of the lands of Tilliernoch, and sasine thereon; after which, engaging in the rebellion, he was attainted.

Captain John Gordon, his brother, claimed the estate, for that he, being only an heir of tailzie, without power of alienation, could forfeit no more than was in him, an estate for life; and besides for that, by charging the estate with an heritable debt, contrary to the prohibitions of the tailzie, he had before his