

1749. *December 1.*

LOCHIEL'S CASE.

No. 12.

A CLAIM was also entered to the estate of Lochiel, in name of John Cameron, infant son of Donald Cameron of Lochiel, pretending that he was not attainted, because the attainder was of Donald Cameron, younger of Lochiel, whereas he was Donald Cameron of Lochiel, and not younger of Lochiel, because though his father John was still alive, yet he was forfeited in 1716, and the son Donald carried the estate by a decree of this Court, and settled the estate in his marriage-contract; but the Court found that he is attainted, and dismissed the claim.

1750. *February 15.*DEMPSTER *against* LADY KINLOCH.

No. 13.

THE deceased Sir James Kinloch, and the late Sir James his son, now attainted, granted to George Dempster an heritable bond of L.20,000 in November 1742, whereon he was infest, but under backbond, declaring that he had then paid but L.8735, the remainder and interest on demand; and in December 1743 he retired the backbond with a short discharge signed by father and son. We sustained Dempster's claim on this bond, though granted after 24th June 1742, the term in the vesting act, in respect it was granted by Sir James the father, then proprietor of the estate, who never was forfeited. *Vide inter eosdem voce* COMPETITION, *et voce* INFESTMENT.

1750. *November 20.*

ALEXANDER FRASER'S CLAIM on the ESTATE of LOVAT.

No. 14.

LORD LOVAT having in 1741 executed a settlement of his estate to himself in liferent, and to his eldest son and other heirs in fee, in form of a strict entail, but with reserved powers to himself, to feu, wadset, contract debts, &c. which he in the same year recorded in the register of tailzies and books of Session, but never completed it by infestment; and the estate being surveyed by the Barons as forfeited by him, it was claimed by his two youngest sons, as next heirs of entail after the master was also attainted; but because the tailzie was not completed by infestment, and because of the great powers reserved, the Lords found the estate forfeited in his person, *reni-*

- No. 14. *tente (inter alios) me* for reasons mentioned, MS. 8vo. \* I indeed thought the settlement void by the act Geo. I., commonly called the Clan Act, and so thought Kilkerran, but the majority thought otherwise, and the point was not determined.

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1750. November 30. ATTAINDER of the ESTATE of PERTH.

- No 15. THE judgment, No. 7, touching the estate of Perth, being acquiesced in by Lord Advocate, the estate was surveyed as forfeited by the attainder of the second brother, commonly called Lord John Drummond, who survived the 12th July 1746; and was again claimed by the said Thomas Drummond of Logie, under a destination by James to him in trust for certain persons, and which was said to be delivered to the deceased Mr James Graham, the ordinary lawyer of the family, by whose advice and direction it was drawn. Mr Drummond objected to the survey of the estate, that it was not forfeited by Lord John's attainder, because he not having surrendered before the 12th July, he stood attainted from the 18th April, and James having died only May 11th, John was then incapable of succeeding to him; for that by the law of England, though a person attainted of treason may take by purchase, but cannot hold, whereby such purchases become forfeited, yet by that law a forfeiting person cannot either take or hold by descent or succession; and therefore estates devolving by succession do not forfeit to the Crown, but become escheat to the overlord or superior *ob defectum hæredis*. The President was of opinion that such was the law of England as to estates held of subject-superiors, but not estates held of the Crown; but the authorities quoted made no insinuation of any such distinction; and most of us, and the President, also thought that the condition of John's attainder being suspensive till 12th July, he was till that day capable of succeeding, and of both taking and holding by descent, and that he might after May 11th, have been served and entered as *legitimus et propinquior hæres* to his brother; and that his not surrendering, though it made his attainder operate *retro* to forfeit to the Crown whatever belonged to him on the 18th April or afterwards, yet would not void his service or the succession devolved to him, but would forfeit it to the Crown; and that the same reason that prevented his brother's being attainted by his death on the 11th May, made John capable of succeeding to him on the 11th May; and therefore we found the estate forfeited by his attainder. The principal objection to the claimant's disposition (besides some others that were not decided) was, that it was not delivered. The claimant ac-

\* See NOTES.