

estate was absolutely at the disposal of each of the heirs, who were under no limitation, the English statute of Edward III. *De Donis* could not apply, and therefore the Court found that the claimant could not be heir to James Drummond,—*renit. Dun. 2do*. They thought that the succession was not by the act 1700 established on the Protestant without some legal deed by service or otherwise ascertaining that the nearer heirs professed Popery and the Protestant heir's own title;—that till then the right of apparenry remained in the Popish heir, who might levy the rents, contract debts, be charged to enter heir, and even be served heir and infest, if the Protestant heir did not oppose; all which deeds of his would be effectual against the Protestant heir;—that therefore the succession having devolved to him before he was effectually attainted, that is, before the day limited for his compearance, he would forfeit the estate to the Crown, and the Protestant heir could not draw it back;—therefore we found that the estate was forfeited, and dismissed the claim.

No. 17. 1751, Jan. 10. CLAIM ON THE ESTATE OF KINLOCH.

On this estate we had three claims, all of them founded on an entail made by the forfeiting person's grandfather, on which there had been charters and sasines, but never recorded in the register of tailzies, though dated only in 1686;—one claim for James Kinloch his eldest son, as next heir of tailzie; another by his brother, in case James's had been dismissed, because he was a son of the forfeiting person, and that the forfeiting person had incurred an irritancy by alienating part of the estate, and an heir contravening forfeited for himself and all his descendants; and a third for David Kinloch Kilrie, nephew to Sir David Kinloch, maker of the tailzie, and heir in remainder, (to speak in English style) for that both the forfeiting person and his father had incurred irritancies. We dismissed the first claim, in respect that the tailzie was not recorded. The second claim was not insisted in, and was dismissed for that reason;—and the third was dismissed both because the tailzie was not recorded, and the irritancy was not declared before the forfeiture.

No. 18. 1751, Jan. 11. CLAIM ON DUNNIPACE.

THIS claim was by the brother of the forfeiting person upon an entail not indeed recorded, but then dated in 1677 before the record of tailzies was appointed, and therefore we generally thought that the not recording was not sufficient to make it forfeitable; but as it had been found by this Court in 1744 against this very claimant that the forfeiting person's debts and deeds were effectual upon the estate, because though the entail contained an irritancy of the contravener's right, yet it had no irritancy of the debts or acts of contravention, therefore we dismissed the claim.

No. 19. 1751, July 16. CLAIMS ON LOVAT, FOR BAILIES KINCAID, &c.

ON Drummore's report we refused to sustain claims for merchant goods and others furnished after 24th of June 1745, and sustained only furnishings before that time; 2dly, We refused to sustain annualrent upon accounts, though furnished before that time.