

1735.

BREADAL-
BANE
v.
MENZIES,
&c.

JOHN, EARL OF BREADALBANE, - *Appellant*;
JAMES MENZIES of Culdares, Esq. }
and ANGUS M'DONALD, of Ken- } *Respondents.*
nock, - - - - - }

29th January 1735.

FOREST.—In a question between the heritable keeper of a Royal Forest and the neighbouring heritors, regarding the boundaries of the forest, the King's Advocate must be made a party.

No. 30. THE Earl of Breadalbane being heritable forester and keeper of the Royal Forest of Mainlorn, and the respondents proprietors of the adjoining barony of Glenlyon, a question arose regarding the boundary of the forest. Mutual actions of declarator were raised, and after a proof and various proceedings, the Lords found that “ the tops of the high hills, where wind and weather sheers, are the marches of the controverted grounds betwixt the barony of Glenlyon, and the forestry of Mainlorn.”

Nov. 23. 1733.

Entered Jan. 22, 1734. The appeal was brought from this and other interlocutors.

Jan. 29, 1735. “ Counsel were called in to be heard in the cause ; and it appearing, ‘ that no person on behalf of his Majesty was a party to either of the suits commenced before the Lords of Session in Scotland ;’

“ It is ordered and adjudged, &c. that the two
 “ interlocutors complained of be, and are hereby
 “ reversed: And it is hereby further ordered, that
 “ the appellant and respondents be respectively at
 “ liberty, either to commence new suits, and make
 “ his Majesty’s Advocate, on behalf of his Majes-
 “ ty, a party thereto; or to make his Majesty’s
 “ Advocate, on behalf of his Majesty, a party to
 “ the suits above mentioned; and thereupon to
 “ proceed therein as they shall be advised.”

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 Judgment.

For Appellant, *Ro. Dundas, J. Strange, J. Taylor.*

For Respondents, *Dun. Forbes, W. Murray.*

The above objection originated with the Court. In a manuscript note upon the papers belonging to J. A. Murray, Esq. it is said that
 “ Inquiry being made in relation to the Court of Session in Scotland,
 “ whether they determine the boundary of a forest without the King
 “ being a party,” the counsel were heard upon the subject.