1680. *December* 15.

GORDON *against* The WADSETTER of the LANDS of BARSCOB.

No 53.
Forfeiture in absence by the Justices being ratified in Parliament, found effectual without declarator.
See No 50 p. 4719.

GORDON of Troquhen being donatar to the forfaulture of the Laird of Barscob, pursues a wadsetter of the rebels to remove, and for mails and duties, who *alleged* no process, because the forfaulture was not declared *via ordinaria et de communi consuetudine;* all forfaultures being done by the justices, and not by the Parliament, must be declared, and this forfaulture was by the justices in absence, and was the first that was ever so sustained; and albeit there be an act of Parliament ratifying the same, yet it must be *salvo jure*, and doth only bear, 'That these forfaultures by the justices in absence against the rebels, in '*anno* 1666, shall be as valid by the justices as if the rebel had been present;' but, though they had been forfault by the justices when present, they needed a declarator. It was *answered*, That this act being a general law, and printed and published as such, and not upon the motion of any private person, it falls not under the act *salvo;* and this act bears not only, 'That these forfaultures, 'whereof this is exprest as one, shall be as valid as if the forfault person had 'appeared before the justices,' but bears also, 'That it shall be as valid as if 'the forfaulture had been in Parliament.'

In respect whereof the LORDS sustained process without declarator.

Stair, v. 2. *p.* 816.

*** Fountainhall reports the same case:

IN the case of Roger Gordon of Troquhen against Cannon, it was *alleged*, That the gift of forfeiture produced by him as his active title was not sufficient for mails and duties, unless it were declared by a decreet of general declarator; seeing it was only a decreet of forfeiture pronounced in the justice court, and not in Parliament. *Answered*, The doom of forfeiture is ratified *ex post facto* in Parliament by the act 1669. *Replied*, The design of that act was to give the justices power to forfeit in absence, and not to dispense with the other formalities. 'THE LORDS found it needed no general declarator.'

Fountainhall, v. 1. *p.* 122.

1686. *March*.

SIR JOHN HARPER, Superior to Coltness *against* The KING'S ADVOCATE, &c.

No 54.

A SUB-VASSAL being forfeited, and his lands annexed to the Crown by act of Parliament, the treasurer appointed a factor to uplift the mails and duties; and there being a multiplepoinding raised by the tenants;

No 54.

It was *alleged* for Sir John Harper, the forfeited person's immediate superior, That his casuality of non-entry was declared before the forfeiture, whereby he had right to the mails and duties till he got a vassal presented.

Answered, The King could not be a vassal, and the lands being annexed to the Crown, he could not validly present. Again, the King being seised *jure coronæ*, the running of the non-entry should stop, as when a vassal is infeft, or a charter offered to the superior.

Replied, The King cannot supply the place of a vassal, by whom the casualities of non-entry, escheat, &c. cannot fall, as by vassals infeft.

THE LORDS preferred the superior.

Fol. Dic. v. 1. *p.* 315. *Harcarse*, (FORFEITURE.) *No* 496. *p.* 137.

1736. *July* 8.
JOHN WALKINSHAW Merchant in Glasgow *against* His MAJESTY'S ADVOCATE.

No 55.
It was found no misnomer in an act of attainder for high treason, that the person was attainted under the sirname of Wakinshaw instead of Walkinshaw, and that he was designed of Scotstown though not infeft in any lands at the date of the attainder.

IN the process, at Mr Walkinshaw's instance, against Messrs Crawford and Corbet, merchants in Glasgow, to account for the profits of a rope-work company, whereof he was a partner, the defenders moved this *objection*, That, by an act of the first year of the reign of his late Majesty, Wakinshaw of Scotstown, the pursuer, was attainted of high treason, whereby he had lost his interest in the company,

Answered for the pursuer; If that act was intended to attaint him, it was defective in several particulars; 1*mo*, In the sirname, his name being Walkinkinshaw, and not Wakinshaw. 2*do*, In the designation of the place where he lived, which was Glasgow. 3*tio*, In the want of the addition of his mystery or calling, which was merchant in Glasgow.

And, with respect to the first of these, it was *observed*, That, by the English law against treason, which is extended to Scotland by the act 7*mo Annæ*, the greatest exactness and certainty is requisite in attainders; nor is any thing left to be supplied by implication, in so much that the omission of a single letter has been found fatal to indictments. Thus, in Rastal's Entries, fol. 279, there are two instances of small misnomers, which yet were sustained to cast the indictments; the one was Royle in place of Ryle; the other Comfry in place of Comfreys. And, in the same place, it is remarked, that an outlawry was reversed, because the sirname was wrote Fee and not Fy, which was the pannel's true sirname. In the trial likewise of Francis Francia, Henry Greenway was called as a juryman; and, upon its being objected, that his name was Greenaway, he was set aside, State Trials, vol. 6. p. 59. All which apply directly to the case in hand; as the pursuer's sirname is not Wakinshaw, but Walkinshaw, which are as different from one another, as Brodie is from Bodie, Leith from Leitch, or Willison from Wilson; in which the omission of a letter makes a different name.