

tour in the charter of the King's immediate vassal, whereof the feued lands are a part. It is true that such feu-vassals do oft-times retour their lands to the retour duty, which thereby becomes their new retour, but they cannot be compelled so to do; but the subdivision of the retour requiring a special process to prove the rents of the whole barony, and thereby divide the retour, the feuers, rather than delay their retour and infeftment, do set down in their service their feu-duty for their retour. And it is evident by the clause, that the Marquis of Huntly's meaning by more than the quadruple of the retour, is not by the feu-duty, but doth expressly relate to the retour of the Earldom of Huntly, and therefore the most that could have been filled up in the blank, is the quadruple of the share of the retour-duty of the Earldom of Huntly effeiring to the lands of Cairnborrow.

THE LORDS found, by Cairnborrow's oath, that the blank in his last charter, for the *reddendo* to the King, not being filled up before the forfaulture of Argyle, ought now to be filled up with the feu-duty in the first feu-charter, being 10 bolls victual, and 14 pounds of money; and found Cairnborrow liable therefore since the forefaulture, and in all time coming, seeing the lands are come in the King's hand by forfaulture, which is perpetual, and not by a temporary return, and ordains Cairnborrow to accept a charter from the Marquis accordingly.

*Fol. Dic. v. 1. p. 313. Stair, v. 2. p. 744.*

1687. July.

DUKE OF GORDON against LOCHIEL.

IN a reduction and improbation at the instance of the Duke of Gordon, as donatar of the Marquis of Argyle's forfeiture, against Lochiel, one of his vassal's in Badenoch,

*Alleged* for the defender; That his lands are not expressed in the pursuer's right, nor did the defender ever acknowledge my Lord Argyle for his superior, nor does the retour say, that the rebel was habit and repute heritor by labouring, &c. and other qualifications mentioned in the act of Parliament about the quinquennial possession, but only that he was repute superior.

*Answered*; Rights of superiority cannot be retoured by deeds of possession, but only by being habit and repute.

*Replied*; Receiving payment of feu-duties is a possession; and the defender is willing to hold the lands of the pursuer as superior; and the property not being alleged to have been in the rebel's person, but only the superiority, it ought not to fall under his forfeiture.

*Duplied*; A superior being forfeited, all rights flowing from him unconfirmed, fall in consequence.

THE LORDS sustained the retour, and repelled the defender's allegiance and reply.

No 16.

No 17.

A superior being forfeited, all rights flowing from him fall in consequence.

No 17.

It was afterwards *alleged* for the defender ; That his lands were feued out before the 1633 ; and the act of Parliament allowing vassals to feu their ward lands, is equivalent to a confirmation of the subvassal's right.

*Answered ; Non relevat*, unless the defender say, that his lands held ward before the year 1633, and were feued for a competent avail, and prove both, as in Lord Lauderdale's process of recognition ; and here the pursuer produces his charter, bearing the barony to hold feu of the King, which is presumed to be the ancient holding, unless the defender prove the contrary, by the more ancient infeftments, which are more likely to be found related to in his rights from the rebel's authors, than that the pursuer, as donatar of the forfeiture, can have them.

*Replied ;* The pursuer's charter proceeds upon his own resignation ; and all lands holding of the King are to be presumed ward, till the contrary be proven.

THE LORDS found the defender obliged to instruct *positive*, that the lands feued before the 1633, held [ward] anciently, and that they were feued for a competent avail.

*Fol. Dic. v. 3. p. 313. Harcarse, (FORFEITURE.) No 498. p. 238.*

1750. November 8. ROBERT BARON *against* The KING'S ADVOCATE.

No 18.

A bill granted after 24th June 1745, when the forfeited estates were vested in the King, not sustained.

ROBERT BARON in Down claimed out of the forfeited estate of Gordon of Tarpersy L. 66 Scots by bill, dated 26th September 1745 ; to which it was *objected*, That by act 20th George II. there are vested in his Majesty, without any office of inquisition, all estates belonged to the persons attainted, on the 24th of June 1745 ; so that Tarpersy's estate being vested in the King from that time, cannot be charged with any debt contracted by him afterwards.

*Answered*, The act vests all estates which did at that time belong to the forfeiting person, or at any time afterwards, but does not enact that they should be vested from thence, nor could with regard to estates afterwards accruing : The time of the vesting is determined by the law ; to wit, that of committing the treason for which any person was condemned ; and Tarpersy had not at the date engaged in the rebellion ; and was condemned for the taking of Carlisle.

*Replied*, The act is plain enough, That the estates are vested from the 24th of June, or the time of their accruing to the forfeiting person : The estates of rebels in 1715 were in the same terms vested by an act *imo* George I. for appointing commissioners to inquire, &c. And in an act *4to* George I. for vesting the forfeited estates, &c. it is said the said estates were vested from and after the 24th of June 1715 ; whereby, if there had been any dubiety, the time from which they were then vested, was determined ; and the present act, in the same terms, must have the same meaning : Sequestrations of any such estate from the first of August are declared void ; which must have been good till the actual at-