

1749. July 24. LORD BOYD *against* OFFICERS OF STATE.

[Elch. No. 8, *Forfeiture* ; C. Home, No. 89.]

IN this case the Lords avoided determining the general question, Whether the clause of the Clan Act annulling all settlements since the 1714 was perpetual, as well as the clause giving a benefit to the loyal superior and vassal? but found that a disposition to an eldest son, with a burden of debts extending to near twenty-two years' purchase of the lands, fell under the exception of the act, being for just and onerous causes, though the lands were sold by the eldest son at twenty-seven years' purchase.

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1749. November 14. ALEXANDER GORDON *against* CREDITORS OF NATHANIEL GORDON.

[Elch. No. 37, *Tailyie* ; Kilk. No. 7, *ibid.*.]

A MAN made a disposition of tailyie with strict irritant and resolute clauses, but did not live to execute it either by registration or infestment, and the heir of entail made up titles by a general service to the maker of the entail, which gave him right to the procuratory of resignation, which, however, he never executed, but possessed the estate upon a personal right merely, and contracted large debts. Upon these debts the creditors adjudged, and thereafter brought on a ranking and sale of the estate, and called as defender the heir of their debtor, (he being then dead,) who appeared, and OBJECTED that he was heir of entail, and that the estate belonged to him clear of all debts, with which his father had no power to burden it; and as his right was merely personal, and so qualified that he could not affect it with debts, the creditors must take it as it stands, and cannot appeal to the faith of the records, which are intended for the security of those that lend their money on real rights. And so it was decided in the case of *Denham*; (*vid.* June 17, 1746,) ——— against *Hamiltons*.

To which it was ANSWERED by the creditors, That all this may be very good law, but that the heir in this case had no right to make the objection, because he had forfeited by his predecessor's contracting of debt as well as the contractor, for, by the irritant clause in the entail, not only the contractor forfeits but his heirs. The words are,—“ If they (*viz.* the heirs of entail) or their heirs shall contravene, &c., then the persons contravening, and each of them, and their heirs above-mentioned, shall forfeit all right and title to the estate,” &c.

My Lord President was of opinion, *imo*, That by these words of the forfeiting clause the heir contravening only forfeited for himself and not for his descendants, because the words of style by which the sons are punished for