

- No. 5. judgment being but a point of form, whereby the rights of parties were not competent by exception or reply, the Parliament might dispense therewith, and also might reponne parties as to the matter of prescription, or *quoad minor non tenetur placitare*; but if without these and such the pursuer had a prior valid right. The Lords were loath to enter upon the case of the exception of the act *salvo jure*.

Stair, v. 1. p. 267.

1749. July 27. The LORD BOYD *against* The KING'S ADVOCATE.

No. 6.

A disposition by a father to his eldest son after the date fixed in the Clan Act sustained, the estate being settled on the son as heir by his father's contract of marriage, and the disposition burdened with debts, of which there were considerable on the estate.

James Lord Boyd claimed the estate of his father the late Earl of Kilmarnock, as disposed to trustees for his use, 10th August, 1732, whereon infeftment was taken in September following.

Answered, The disposition is ineffectual, by the act *primo* Geo. I. called the Clan Act, whereby all conveyances in favour of the granter's children, made after 1st August, 1714, by any person who should be convicted of the high treasons specified in that act, should be void and null, except deeds for just and onerous causes, otherwise instructed than by the writings themselves.

Replied, When this statute was under the consideration of the Court in the case of Invercauld, it appeared that some of the clauses thereof were calculated for the then conjuncture of affairs, and some for a longer endurance; and it were absurd to imagine that this clause, which annuls deeds from 1714, on the presumption that the preparations were making for that rebellion by the persons afterwards concerned in it, should extend to annul all deeds done thereafter, by persons who might happen to engage in any other rebellion, though there was no view thereof at the executing the deed. Besides, this disposition is with the burden of debts, and these are condescended on sufficient to exhaust, or so near exhaust the estate, as conjoined with the obligation the Earl came under by contract to leave it to the heir of his marriage, made a sufficient just and onerous cause.

Duplied, A disposition to an heir with the burden of debts is not an onerous cause. The King will take, subject to the debts, and in this case there is a valuable reversion.

A condescendence of debts being made and instructed,
The Lords sustained the claim.

D. Falconer, vol. 1. No. 89. p. 96.