

No. 20. 1752, Feb. 8. CLAIMANTS ON M'INTOSH'S ESTATE.

THE Lords found, *me referente*, that the claimants were not entitled to expenses of diligence whether on bills or bonds even before 24th June 1745, because by the vesting act they are not entitled to any penalties through failure of payment; 2dly, that no recommendations to the Court of Exchequer for payment of any claims should be made except by the Lords in presence, and then *causa cognita*.

No. 22. 1753, Feb. 9, July 10. FARQUHAR, CLAIMANT.

ELIZABETH FARQUHAR, niece and one of the co-heiresses of Colonel Farquhar, and Stormont her husband, after the sale of the Colonel's estate purchased with her share of the price certain lands, and took the rights to her in liferent, and after her decease to Stormont in liferent for security to him of an annuity of 500 merks for life, and in the event of his surviving all the children a total liferent of the whole lands, and to Francis Stormont the second son in fee. Stormont the father was attainted of high treason, and afterwards got a transportation pardon, and then an act of Parliament was made for preventing these pardoned Rebels return to Britain;—and these lands being surveyed by the Exchequer, two claims were entered, one by Francis Stormont for the fee, concerning which there was no dispute except as to the liferent in case of Stormont's surviving his wife,—the other a claim for the wife of her liferent, and for the possession from the attainder of her husband;—and her Counsel maintained, that by the law of England the husband's *jus mariti* or right to the rents and profits of his wife's estate does not forfeit, and that by that law though he had a freehold in his wife's estate vested in her in fee, yet not in his wife's liferent lands; 2dly, That though such right did forfeit, yet by that law the abjuring the realm or banishing for life, has the same effect as to his wife as his natural death, and entitles her to jointure, and quoted Coke's Institutes, 1, p. 133, the case of Weyland, and therefore she has right to the whole rents, &c. as in the eye of the law he is considered as dead;—he could neither forfeit the annuity nor the total liferent in case of his surviving his wife;—and the Counsel having been heard and given us Informations, we delayed at the claimant's desire till they could bring us further authorities,—and they brought us the opinion of a Chamber Counsel, Mr Carthy, giving the first two points against them; but he thought the act of Parliament confirming the banishment should have the same effect with abjuration;—and on the other hand Lord Advocate read the opinion of the King's English Counsel differing from him. I could not take on me to say which of them was in the right in the law of England, but I thought the argument did not apply to this case, for though the law of England was the rule of judging in forfeitures by treason, yet here there was no doubt, that if notwithstanding the banishment the *jus mariti* remained with the husband, that even by the law of England it was forfeited to the Crown, and what rights fell under the *jus mariti*, and how long it subsisted, behoved to be judged by the law of Scotland, for the law with respect to the effects of abjuring the realm, was none of the treason laws, which alone are extended to Scotland, for it obtains in all felonies, and mostly without any conviction, and it was not said that a husband's *jus mariti* determines by his abjuring the