precedents both in England and Scotland,—but the Lords dismissed both claims. They thought no claim could be sustained upon a cancelled bond and assignation, which for any thing that appeared were cancelled the moment they were signed and never delivered, and whether the forfeiting person had a power to revoke or not, the last bonds of provision could not become debts while they remained in his custody, and even though they had been delivered, yet since they were revokable they were not debts on 24th June 1745 in terms of the vesting act.—(23d July 1752.)

Ebenezer Oliphant being creditor in relief to Gask in several debts, entered his claim on the estate which was sustained. Thereafter the Barons of Exchequer surveyed an heritable bond due to Gask on the estate of Nairn, and he entered a new claim of relief on that subject, which was also of consent sustained (so far as he shall not recover payment out of the other estate,)—but here he claimed other three articles, to which he said he was entitled as cautioner, first the expenses of his former claim, 2*do*, the expense of one of the creditors to whom he was bound of entering his own claim and recovering a decree, and which this claimant said he had paid him; 3*tio*, the dues paid by him in Exchequer in obtaining payment. But we unanimously rejected all the three and dismissed the claim as to them, because they were not debts due by the forfeiting person nor now by the Crown, nor deductions out of the debt, but the claimant's own money,—pretty similar to the question anent the common expenses of ranking and sales, decided in 1738 betwixt the Bank of Scotland and Creditors of Prestonhall, and in 1742 betwixt the said Bank and Fraserdale.

No. 25. 1754, Feb. 28. DUNCAN'S CLAIM on KINLOCH.

ONE Duncan claimed on an accepted bill on Sir James Kinloch the attainted person for L.100 Scots dated 28th August 1745. Objected, That it was after 24th June when the estate was vested in his Majesty. Replied, That it was for the remains of a prior bill for a larger sum dated several years before. Drummore, Ordinary, having allowed a proof, two witnesses deponed that such a prior bill had been assigned to the claimant in spring 1745, and this claimant, and the attainted person, (who is now pardoned) told them that it was transacted, and a bill given for the balance. The case was reported to us, and I had some diffioulty both as to the proof and the point of law, for that here there was really no other evidence than the words of the claimant himself and attainted person, and when they told so the witnesses did not say,—and in point of law no claim could lie for this bill though there might for the former if extant,—and this was raising up a debt of borrowed money by witnesses; and supposing that were legal evidence of the former bill, yet there is still some difficulty, for in the case of York-Buildings Annuitants we altered our first interlocutor, and found that annuitants who were secured upon the estates, but who or their assignees had given up their bonds and taken new bonds, had not the real security due to their first bonds,—and although there was great equity in sustaining every claim of debt contracted *bona fide* before the debtors engaged in the Rebellion, yet that equity could not operate against the statute, unless the claimant was creditor in a debt in law or equity prior to 24th June 1745. The Court sustained the claim *renit.* Strichen, Kilkerran, *et me.*—28th February, We adhered, when also our new

President joined,* as did I likewise in consideration of the smallness of the sum, which removed any suspicion of deceit; but we all, almost, agreed that had it been a large sum we would have thought the proof insufficient.

*** The case of Barisdale is referred to by Lord Elchies in his Dictionary, as in his Notes. It relates chiefly to a misnomer, and is mentioned along with the cases of Pitsligo and Lochiel, but without date. The Editor has not yet found it. See SUPERIOR AND VASSAL. See also TAILZIE.

FORISFAMILIATION.

No. 1. 1737, Nov. 18. JEAN BEGG *against* JEAN LAPRAICK.

THE Lords found, that Jean Begg having accepted of a provision in full satisfaction of âll portion natural or bairns part of gear, without mention of executry dead's part or moveables she might succeed to by and through her father's decease, does not exclude her from a share of her father's dead's part as one of his executors, he having died intestate; and therefore found that she hath right to an equal share in the dead's part with her brothers and sisters, and that the same falls to be divided amongst them *secundum capita*; and further found the *proviso*, that the said Jean Begg was only to be a bairn in the house with the rest of his daughters but not in the least with his sons does subsist and is effectual in favour of the sons, notwithstanding of the father having died intestate, and of his having made no deed of provision in favour of his sons; and therefore found that the sons have right to the same legitim or bairns part as if Jean had not existed at the time of her father's decease; and in respect that Jean is only provided to be a bairn in the house with the rest of the daughters, and that the father could not nor hath not by any clause in the contract prejudged the daughters as to their legal share in the legitim, found that each of the daughters excepting Jean must have an equal share in the whole legitim according to the division of law amongst the whole children including Jean, and therefore found, that after deducting the shares of the sons as if Jean had not existed at the time of her father's death, and after allowing to each of the other daughters such share as would belong to her according to the division of law, taking in Jean as a bairn of the house, that the remainder of the bairns part or legitim only belongs to Jean and no more; and found that Jean is not obliged to collate her tocher, but hath right to the same as a *præcipuum*, and remit to the Ordinary to proceed accordingly.

Upon this case sundry questions did arise that are all determined by the above interlocutor. I own I doubted as to the dead's part, that by our practice accepting a provision in satisfation of legitim without expressing executry or moveables was a forisfamiliation, and excluded that bairn in competition with bairns in family from any share of the dead's part as well as of the legitim. If that was the law, in this case the division of the dead's part must have been in the same proportion as of the legitim. But all the rest of the

* President Craigie was admitted on 2d February 1754.