

they could not, by this last act, be vested in the Crown; and therefore there is the following clause inserted in the vesting act: 'Provided always, that nothing in this act shall extend to, take away, alter, or diminish, any right, title, benefit, or advantage whatsoever, which any superior, vassal, &c. are, or may be entitled unto, by virtue of an act for encouraging all superiors, &c. or repeal, alter, or make void, any of the pretensions or things in that act contained, any thing herein to the contrary notwithstanding.' By this act, therefore, the superior's right, derived from the clan-act, was no wise altered; consequently the estates vested in them by that act were not by this act vested in the Crown; and in consequence of that again, no claim could be entered upon them, in terms of the vesting act.

'THE LORDS repelled Appin's defence.'

Act. *And. Pringle.*

Alt. *Ferguson.*

J. D.

Fac. Col. No 27. p. 48.

1757. July 6.

CHARLES FRASER of Inverallachy *against* HIS MAJESTY'S ADVOCATE.

IN 1740, Simon Lord Lovat executed a disposition of certain lands in favour of Charles Fraser of Inverallachy. In 1742, a charter was taken out, and in 1743 infeftment followed. Charles Fraser redispensed the same lands to Lord Lovat, to be holden of him for payment of L. 6 Scots yearly, retaining thereby the superiority.

Lord Lovat was attainted of high treason 19th March 1747.

Charles Fraser, agreeable to the direction of the act of Parliament of George II. vesting the estates of certain traitors in the Crown, entered a claim for the superiority of the lands dispensed to him; and also claimed the property of the same lands, in terms of the act 1st George I. called the clan-act, as being a subject-superior who had continued peaceable and dutiful.

The claimant was examined upon oath, and gave this account of his right: 'That he paid no value for the lands mentioned in his claim: That he had expressed to Lord Lovat a desire to have a qualification to vote for a member of Parliament in the county of Inverness, which his Lordship said he would give him: That, some time after, he received a letter from Lord Lovat, giving him notice, that he had made a disposition in his favour: That the disposition was never delivered to the deponent, nor in his hands, nor did he ever see it: That he gave no orders with regard to the charter or sasine, nor paid the expense of either, which was done, he believes, by Lord Lovat himself; but that he gave orders to his agent, to take the advice of counsel as to the proper manner of framing his qualification, and making it effectual: That he paid the expense of this, and produced the signed opinion of his counsel, and the

No 72.

No 73.

Disposition of a superiority in order to give a vote, upon which charter and infeftment followed, but no other delivery, found not good against the Crown's right by forfeiture.

No 73.

‘ queries to which it referred, dated in 1741 : That the charter and sasine were never in his hands except at the general election in 1747, where he voted as a freeholder : That he knew not by whom they were put into his hands ; but that he left them with the Sheriff-clerk, to be returned to William Fraser, who was his agent, and had also been Lord Lovat’s agent : That he did not grant any obligation for reconveying to Lord Lovat the superiority of the lands ; nor was ever any such obligation asked or demanded of him.’

It was *objected* to this claim by his Majesty’s Advocate ; That the right granted to the claimant was nominal and fictitious, for the sole purpose of giving him a right to vote : That Lord Lovat kept the disposition always in his own possession, in order that the right might be always under his power : That the charter and sasine were afterwards obtained at the expense, and by the direction of Lord Lovat, not of the claimant ; and it appeared that neither of them were ever in his possession, except for a moment ; and that he immediately restored them to Lord Lovat’s attorney.

Answered, The intention of Lord Lovat was indeed to give the claimant only a right to vote ; but, in order to do this, it was necessary to give him an absolute and complete right to the superiority of these lands ; and this he appears to have done. The queries, and signed opinion of counsel in 1741, show, that it was the intention to give the claimant the superiority absolutely and irredeemably. The not delivery of the disposition appears to have been accidental, the claimant having neglected to ask for it ; but the omission was of no importance, as the infeftment taken upon the charter in 1743, was a delivery in the strongest and most irrevocable manner, after which Lord Lovat had no further power over the right ; and the claimant was under no obligation, express or implied, to reconvey the superiority to Lord Lovat.

THE LORDS dismissed the claim.’

For the Claimant, *Johnstone*. Alt. *King’s Counsel, Macqueen*. Clerk, *Kirkpatrick*.
W. J. *Fol. Dic. v. 3. p. 236.* *Fac. Col. No 36. p. 59.*

1760. November 26.

JAMES DUKE of ATHOLE *against* HIS MAJESTY’S ADVOCATE.

No 74.

An act of attainder passed against James and John Drummond’s, whereby it was declared, ‘ That if they did not surrender themselves on or before the 24th day of

By an act in the 1st of George I. it was provided, ‘ That if any subject of Great Britain, holding lands of a subject-superior in Scotland, shall be guilty of the treasons therein mentioned, and shall be thereof duly convicted and attainted, his lands or tenements, held of any subject superior in Scotland, shall recognosce and return into the hands of the superior, and the property shall be consolidated with the superiority, in the same manner as if the same lands had been by the vassal resigned into the hands of the superior *ad perpetuam remanentiam*.’