

Ex parte.

The Commissioners and Trustees of the Forfeited Estates, - - - *Appellants* ; Case 72.
 Sir James Mackenzie of Royston, one of the Senators of the College of Justice, - - *Respondent.*

19th December 1720.

*Forfeiture for Treason.—Recognition to a loyal Superior.—1 Geo. 1. c. 20.—*An act of parliament having enacted, that the lands of those guilty of high treason, held of subject superiors, should recognise and return into the hands of the subject superior who continued loyal ; John Grant, an attainted person, held his lands of Alexander Mackenzie as his immediate superior : this Alexander was also attainted, and he held of Lord Royston as his superior, Lord Royston holding of the Crown : by the attainder of Grant, Lord Royston was not entitled to the property of Grant's estate, but the same was forfeited to the Crown.

JOHN GRANT of Glenmoristoun, proprietor of the lands of Auchnacaldan, &c. being attainted for high treason, the appellants caused his estate to be surveyed as vested in them for the use of the public.

The respondent presented his exceptions to the Court of Session stating that John Grant, the forfeiting person, did hold the premises of Alexander Mackenzie of Frazerdale, who was likewise attainted for high treason, and that Alexander Mackenzie of Frazerdale held the same lands of the respondent as his superior : and contending, that as the said Alexander Mackenzie and John Grant were so attainted he the respondent had right to the lands and estate of the said John Grant, in virtue of a clause in the act of parliament, 1 G. 1. c. 20. intituled ‘ *An act for encouraging all superiors, vassals,*’ &c. whereby it is enacted, “ that
 “ if any subject of Great Britain holding lands or tenements of
 “ a subject superior in Scotland has been or shall be guilty of
 “ such high treason or treasons (as in the said act mentioned)
 “ every such offender who shall be thereof duly convicted and
 “ attainted, shall be liable to the pains, penalties, and forfeitures for high treason, and his lands or tenements, held of
 “ any subject superior in Scotland, shall recognise and return
 “ into the hands of the superior, and the property shall be and
 “ is thereby consolidated with the superiority, in the same manner as if the same lands or tenements had been by the vassal
 “ resigned into the hands of his superior *ad perpetuam remanentiam* :” and the respondent therefore prayed that the premises might be adjudged to belong to him as superior, in terms of the said act of parliament.

To these exceptions the appellants made answers ; and the Court, on the 20th of August 1719, “ found that the exceptant
 “ had right to the property of the forty-shilling laud of Auchnacaldan, &c., part of the barony of Glenmoristoun, which were
 “ holden

“ holden of the exceptant, as immediate superior by Alexander
 “ Mackenzie late of Fraferdale, and of the said Alexander Mac-
 “ kenzie by John Grant late of Glenmoristoun; by the attainder
 “ and conviction of the said John Grant late of Glenmoristoun,
 “ and Alexander Mackenzie late of Fraferdale, since the
 “ 24th day of June 1715 years, and before the 24th day of June
 “ 1718 years, for treason committed before the 1st day of June
 “ 1716 years: and found that the exceptant had right to the
 “ rents, profits, and issues payable for the said lands and others
 “ from and since the said 24th day of June 1715 years, with the
 “ burden of a proportion of the debts in the terms of the act of
 “ parliament 5 Geo., intituled ‘ *An act for enlarging the time to*
 “ *determine claims on the forfeited estates;*’ and found, that the
 “ public had no right nor interest therein by the attainder or
 “ conviction of the said John Grant late of Glenmoristoun, and
 “ Alexander Mackenzie late of Fraferdale; and therefore sus-
 “ tained the exception presented by the said Sir James Macken-
 “ zie; and found, decerned, and declared accordingly.”

The appeal was brought from “ an interlocutory sentence or
 “ decree of the Lords of Session, pronounced the 20th of August,
 “ 1719.”

Entered,
 21 Dec.
 1719.

Heads of the Appellants' Argument.

John Grant, the forfeiting person, whose estate the respondent claims, did not hold that estate of the respondent as superior, but of Alexander Mackenzie of Fraferdale, and therefore the estate could not recognise or return into the respondent's hands by the treason or attainder of John Grant.

If the said John Grant's estate had recognised by his treason or attainder to any subject superior, then it must have recognised to Alexander Mackenzie of Fraferdale, he being John Grant's superior. But Alexander Mackenzie having rendered himself incapable of claiming that benefit by his going into the rebellion himself, the act of parliament takes no place as to the estate of John Grant: that estate is forfeited to the Crown, and to no subject superior.

The appellants do admit, that in so far as Alexander Mackenzie was interested in the estate, his right does recognise and return to the respondent; but no more can return to the respondent than what belonged to Alexander Mackenzie; that is, the right of superiority, but not the right of property, which belonged to John Grant.

The respondent contended, that though the estate would not have belonged to him by the treason and attainder of John Grant alone, yet Alexander Mackenzie, immediate vassal to the respondent in that estate, and immediate superior to John Grant, being likewise attainted, the respondent thereby became superior to John Grant, and as such was entitled to the benefit given by the act of parliament. But this proceeds upon a mistake, as if the right and vassalage holden by John Grant of Alexander Mackenzie, were, by the treason of John Grant, extinguished, and consolidated

solidated with the right that was in the person of Alexander Mackenzie. This, however, will not hold, for the act of parliament only declares the right of the vassal to be consolidated with the superiority, where the superior did continue loyal and dutiful: but Alexander Mackenzie having been guilty of treason, this guilt did hinder John Grant's right of vassalage from being consolidated with Alexander Mackenzie's right of superiority; and that right of vassalage does still subsist, and is forfeited to the Crown. Nor can the respondent ever claim the estate of John Grant by the attainder of Alexander Mackenzie, unless he can first make it appear that John Grant's estate was lodged in Alexander Mackenzie's person.

A petition was presented to delay the hearing, by the respondent's agent, praying, "In regard the petitioner has not received
" the remittances from Scotland he expected, and being unable
" to raise money at this juncture for defraying the expences in
" this cause; that the time for hearing the same may be en-
" larged." The House being informed, that the appellants' counsel were attending, proceeded to hear the appeal, and made the following order thereon:

Journal,
19 Dec.
1720.

Whereas this day was appointed for hearing counsel upon this appeal, as also upon the answer put in thereto; counsel appeared for the appellants and were heard (none attending for the respondent), and being withdrawn; after due consideration of what was offered in this case, it is ordered and adjudged, that the interlocutory sentence or decree complained of in the said appeal be reversed.

Judgment.

For Appellants, *Ro. Dundas. Sam. Mead.*

The Commissioners and Trustees for the
Forfeited Estates, - - - *Appellants;*

Case 73.

Sir George Stewart of Balcaskey Bart. Heir
of John Stewart Esq; of Grantully, de-
ceased, - - - *Respondent.*

21st Dec. 1720.

Forfeiture for Treason.—Recognition to a loyal Superior.—1 G. 1. c. 20.—An act of parliament gave to superiors, continuing dutiful and loyal, the estates of attainted vassals: to a ~~vassal~~ claiming the estate of his vassal, it is objected, on the 12th of September 1719, that he had not continued dutiful and loyal, but had corresponded with the Pretender, entertained him at his house, and given him a present of plate: the Court of Session, on the 29th of October, two days before their powers expired, granted the objectors a proof; and no proof being adduced on the 31st, circumduced the term against them; and decerned in favour of the claimant: the judgment is reverted.

Superior

JOHNS STEWART, late of Kynachin, attainted, was seised and possessed of the lands of Borlick, and Mill thereof, which he held of John Stewart of Grantully, as his superior.

Z

John