

they asked but they made no use of it. Notwithstanding the shortness of the time, which was all that the judges could give, if there had been any ground for this inquiry, there is no doubt but the appellants would have had their witnesses in readiness; and any negligence on their part cannot hurt the respondent, or deprive him of the benefit allowed by act of parliament to superiors, since he has done every thing which that act required.

Judgment,
21 Dec.
1720.

After hearing counsel, *The question was put, whether the said decree shall be reversed: it was resolved in the affirmative.*

For Respondent. *Sam. Mead. Will. Hamilton.*

The report of this cause was taken from the printed case for the respondents only; that for the appellants could not be found, after a search in several publick and private libraries.

Cafe 74. The Commissioners and Trustees of the
Foster's Forfeited Estates, - - - Appellants;
Crown Law, Patrick Farquharson late of Inveray, Esq; Respondents.
p. 82.

9th Jan. 1720-1.

Falsa Demonstratio.—Mishomer.—The attainder and forfeiture of *Alexander Farquharson*, did not affect a person of the same surname and description, but bearing the Christian name of *Patrick*.

Vide Com-
missioners
of Forfeitures
v. Gordon. No. 60
hercof.

BY an act of parliament 1 Geo. 1. c. 42., it was enacted, that if amongst others, *Alexander Farquharson* of Inveray, should not render himself to one of his majesty's justices of the peace, on or before the last day of June 1716, he should stand attainted of treason from the 12th of November 1715. By virtue of two other acts of parliament 1 Geo. 1. c. 50., and 4 Geo. 1. c. 8, the appellants seized and surveyed the respondent's estate as vested in them, by the attainder of *Alexander Farquharson*.

The respondent in terms of the act 5 Geo. 1. c. 22. presented his exceptions to the Court of Session, setting forth his title to the lands so seized and surveyed, and contending that the attainder of *Alexander Farquharson* did not affect him; and the Court on the 19th of August 1719, gave judgment in his favour.

Entered,
18 Dec.
1719.
Judgment,
9 Jan.
1720-21.

The appeal was brought from "an interlocutory sentence or decree of the Lords of Session of the 19th of August 1719.

After hearing counsel, *It is ordered and adjudged, that the said petition and appeal be dismissed, and that the interlocutory sentence or decree therein complained of be affirmed.*

This appeal is on a point precisely similar, with that against *Alexander Gordon* of Auchintoule, 25th February 1719-20,
No.

No. 60 of this Collection, it is not necessary to be further stated. No printed cases in the present appeal were found; perhaps none might be printed.

The Commissioners and Trustees of the
 Forfeited Estates, - - - - *Appellants;* Case 75:
 John Hog, Merchant in Edinburgh, - *Respondent.*

18th Jan. 1720-21.

Trust.—Forfeiture for Treason.—A disposition held ineffectual to convey an estate, which was executed by a trustee, and not consented to by the truster.

UPON the attainder of the Viscount of Kenmuir for high treason, the appellants caused seize and survey the ancient estate of the family. The respondent by virtue of the act 5 G. 1. c. 22. put in his exceptions to the Court of Session, against the said survey, in so far as concerned some houses and lands, lying near the town of New Galloway. He stated that he had purchased these houses and lands from George Hume of Whitfield, with consent of Captain James Dalzell; and he produced a disposition in his favour with sasine thereon, dated in 1712. Both these persons were attainted after that date, for high treason.

The appellants stated in answer to this, that the estate of Kenmuir, was about the year 1643, charged with so much debt, that it was judged expedient to purchase decrees of apprising to be held by a trustee for the behoof of the Viscounts of Kenmuir. That accordingly a decree of apprising was purchased for this purpose in 1646, which after some mesne conveyances came to the hands of George Hume of Whitfield, still as a trustee; and he was seized in the estate by virtue of a charter from the crown in 1701. That this George Hume, in 1711 transferred his trust right to Captain James Dalzell, but the latter was not infeft; and that the conveyance by Hume and Dalzell to the respondent was void, being made by the trustee, without any consent by the viscount of Kenmuir.

The Court of Session on the 15th of September 1719, “found
 “ that neither William late Viscount of Kenmuir, George
 “ Hume of Whitfield, nor Captain James Dalzell, were entitled
 “ unto the tenements and acres mentioned in the exception, in
 “ their own right, or to their own use, or any other person in
 “ trust for them on the 24th of June 1715, or at any time since;
 “ and found that the respondent was then, and has been ever
 “ since, vested in the right of property of the premises.”

The appeal was brought from “an interlocutory sentence or
 “ decree of the Lords of Session, made the 15th of September
 “ 1719.”

Entered,
 18 Dec.
 1719.