

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put in thereto; counsel appeared for the appellants and were heard (none attending for the respondent), and being withdrawn; after due consideration of what was offered in this case, it is ordered and adjudged, that the interlocutory sentence or decree complained of in the said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*

**J**OHNS 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.

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John

John Stewart of Kynachin being attainted of high treason in 1716, John Stewart of Grantully as superior, in terms of the act of parliament 1 G. 1. c. 20. "for encouraging all superiors" &c., claimed the said lands of Borlick and Mill thereof as recognised and returned into the hands of the superior, and that the property was consolidated with the superiority, in the same manner as if they had been resigned in the hands of the superior *ad perpetuam remanentiam*. He also obtained himself in feft in the premises, and did diligence in manner pointed out by the act, by means of which he attained possession.

The estates of all persons attainted having been by act of parliament vested in the appellants, for the use of the publick, they caused seize and survey the said lands of Borlick and Mill thereof, as belonging to Stewart of Kynachin the attainted person. John Stewart of Grantully, the superior, thereupon in pursuance of the act 5 Georgii, c. 22. intituled "an act for enlarging the time for determining claims on the forfeited estates," presented his exceptions to the Court of Session against such seizure and survey, insisting upon his right to the lands in question, in terms of the act for "encouraging all superiors," &c. The appellants on the 12th of September 1719, put in their answers to these exceptions, admitting John Stewart of Grantully's right of superiority, and that he had done diligence in the terms prescribed by the act; but they contended that he was not entitled to the premium contained in the act for "encouraging all superiors," &c., which was only intended for superiors continuing "dutiful and loyal;" whereas, as the appellants insisted, John Stewart of Grantully had not continued dutiful and loyal, but had corresponded with the pretender, entertained him at his house when in Scotland, and sent him a present of plate, &c.

When the cause came to a hearing, the counsel for John Stewart of Grantully denied the several facts charging him as undutiful and disloyal, and contended that he had always behaved as became a good subject; but they insisted further, that though the facts stated by the appellants had been true, yet that no proof could be taken of them, as they inferred the crime of high treason, which could only be tried by a jury; they also pleaded that a proof and prosecution for these alleged facts was barred by the act of indemnity, in none of the exceptions to which the exceptant was named. On the 29th of October 1719, the Court

7 G. 1. c. 29. "found, that such facts as may infer undutiful and unpeaceable  
 "behaviour to his majesty, may still be proved by the publick,  
 "notwithstanding of the indemnity, in order to debar the said  
 "John Stewart of Grantully from the premium allowed to duti-  
 "ful superiors by the act 1<sup>mo</sup> Georgii, intituled "an act for en-  
 "couraging all superiors, vassals," &c. and before answer granted  
 "warrant for letters of first and second diligence for the publick  
 "to prove the facts alleged in their answers, or any other that can  
 "import undutiful and unpeaceable behaviour of the said John  
 "Stewart of Grantully to his majesty, to be reported against  
 "Saturday next the 3<sup>rd</sup> of October." By act of parliament  
 this

This was the last day on which the Court of Session could hear or pronounce judgment upon these exceptions.

The cause being accordingly called on the 31st of October 1719, and no proof having been produced for the appellants, the Court “circumduced the term against them for not proving in  
 “ terms of their former interlocutor ; and found that in virtue of  
 “ the acts of parliament referred to in the exceptions, the re-  
 “ spondent has right to the property of the lands of Borlick and  
 “ others contained in the exceptions and vouchers thereof, which  
 “ were holden of the said John Stewart of Grantully, by John  
 “ Stewart late of Kynachin now attainted ; and found that the  
 “ said John Stewart of Grantully had right to the rents, profits,  
 “ and issues payable for the said lands and others from the said  
 “ 24th of June 1715, and in time coming, with the burden of the  
 “ debts in terms of the late act of parliament, anno 5to Georgii,  
 “ intituled “ an act for enlarging the time for determining claims  
 “ upon the forfeited estates.”

The appeal was brought from an interlocutory sentence or decree of the Court of Session of the 31st of October 1719.

Entered,  
 21 Dec.  
 1719.

*Heads of the Appellants' Argument.*

The Court of Session did not admit the appellants to the proof of the disloyalty of John Stewart of Grantully, when they gave in their answers upon the 12th of September 1719, but delayed giving their judgment till the 29th of October, and they then gave the appellants only two days time to prove the several facts of disloyalty insisted upon, when at the same time, they could not in that space bring evidence of these facts from a remote county, where Stewart of Grantully lived.

*Heads of the Respondent's Argument.*

Though John Stewart of Grantully thought he had very good reason to appeal against such part of the judgment as allowed any proof of the facts insisted upon, which was in a manner proving treason against him in an irregular way after the indemnity, and after the three yeats limited for such prosecutions ; yet he, conscious of his own innocence submitted to this irregular mode of inquiry. But when that liberty was granted, the appellants did not aim at examining one witness, or take out any order for that purpose ; though doubtless there were at that time in Edinburgh abundance of people thoroughly conversant with Stewart of Grantully's behaviour during the whole time of the rebellion. As to the shortness of the time the appellants complain of it without any ground, for when this cause was first under the consideration of the Court, the appellants did not pray for a commission to examine witnesses ; and when the Court, after an adjournment, met again on the 22d of October, yet the appellants never endeavoured to bring on the cause, or prayed for such commission, though they knew that the Court was limited to determine all these cases before the 1st of November. When the cause was at length heard, the Court indulged the appellants with the commission

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.