

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.

(In this appeal the appellants' case only was found; it stated some of the circumstances on which the allegation of trust was founded, but too indistinctly to be here detailed.)

Judgment,
18 Jan.
1720-1.

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.*

Cafe 76. The Commissioners and Trustees of the
Forfeited Estates, - - - *Appellants;*
Sir George Stewart of Balcaisky, Bart. *Respondent.*

20 Jan. 1720-21.

Fiar — Forfeiture for Treason — A crown vassal in 1707 sells and disposes his estate to an onerous purchaser, with procuratory of resignation, and other usual clauses, and the price is paid: the crown vassal in 1715 is attainted for treason, and the purchaser, who had not completed his title by investment, makes resignation, and takes sasine on a charter from the crown: The estate was not forfeited by the attainder of the seller.

BY an act of parliament 1 Geo. 1. c. 42. intituled "an act for the attainder of George Earl of Marischall and others," John Stewart of Invernytie was attainted of high treason. The appellants thereupon caused what they deemed to be his estate, particularly the lands of Gaskinhall, and others in the parish of Kilspindy and shire of Perth, to be seized and surveyed for the use of the publick.

John Stewart of Grantully in pursuance of the act 5 Geo. 1. c. 22. presented his exceptions to the Court of Session against the said seizure and survey, setting forth, that in May 1707, the said John Stewart of Invernytie by a mutual agreement entered into with John Stewart of Grantully, obliged himself to convey the said lands of Gaskinhall, and others to Grantully, and his heirs, subject to the jointure of Invernytie's mother; in consideration whereof John Stewart of Grantully obliged himself to pay at the rate of thirteen years' purchase of the rent payable in kind, and eleven years' purchase of the rent payable in money: and in pursuance of this agreement, John Stewart of Invernytie, with consent of Mary his wife, on the 11th of August 1709, executed a disposition of the premises in favour of John Stewart of Grantully, which was judicially ratified by the wife; and the purchase money, 30,000*l.* Scots, was paid to the disponent on the day of executing the disposition, and a receipt granted for the same:

That on the 30th of September 1712, Invernytie's mother, for an onerous consideration, conveyed her jointure issuing out of the premises to James Baird, Merchant in Edinburgh; and on the 7th of October 1712, Mr. Baird conveyed the same to John Stewart