

him, Wedderburn assigned the 4000 merks, which by progress is now on Ninian Hume's person;—and being afterwards forfeited before he had disposed the superiority, Ninewalls got the superiority decerned to him as vassal upon the Clan Act;—and being sued for payment of the price of the superiority, his defence was that Wedderburn had not conveyed it to him. The case was long argued on the Bench. Arniston thought that if the superiority could after the forfeiture have been claimed on the decret-arbitral, that he would be liable although he took it on the Clan Act, but he thought that there lay no claim in law either to property or superiority of lands after forfeiture upon personal deeds or obligations. The President was of the same opinion, and that if any claim had lain upon the minute of sale while the price was not paid, the claimant must have paid the price to the Crown, or its donatar, whether superior or vassal; nay he thought that if Ninewalls had paid the price he might not only have taken the superiority on the Clan Act as vassal, but also (if Wedderburn had not other creditors to exhaust his estate) might have claimed back the price out of his estate. But the Court thought that on the statutes concerning forfeitures there lay a claim upon the decret-arbitral for the superiority, both on the Clan Act and Act of Enquiry; that that claim was not prejudged by the forfeiture, or by the gift to superiors and vassals, and that his claiming on the gift as vassal could not prejudice the onerous assignees to the price,—and therefore found him liable.

No. 5. 1742, Feb. 25. M'KENZIE *against* OFFICERS OF STATE.

WE all agreed that by the act 6^{to} Geo. II. purchasers of forfeited estates formerly held feu of the Crown were to hold them blench and free of all feu-duties, and that notwithstanding the blunders in the act 4^{to} Geo. II. But our difficulty was, whether the Crown intended to give away these feu-duties? which was no difficulty in law but in equity. But Arniston told us he assisted in framing the act 6^{to} Geo. II. that it was intended to free the purchasers of these feu-duties, and to correct the blunders in the former act, which removed our difficulties, and we found in favours of the purchasers. 25th February 1742. The Lords Adhered, and refused a bill without answers.—(27th Nov. 1741.)

No. 6. 1748, Nov. 4. ALEXANDER GORDON *against* OFFICERS OF STATE.

THE late Sir William Gordon raised reduction against Gordon of Muiresk of a sale of some lands bought by him from George James Gordon, on pretence of a prior minute of sale betwixt the pursuer and the said George, and Balmerino, Ordinary, assoilzied and decerned. Sir William reclaimed to us by petition and additional petition, which were both answered,—but before advising Sir William was attainted of high treason,—and the defender upon a diligence cited the Officers of State, and intimated the process to Lord Advocate, who declined to meddle in it. This day at advising the Lords doubted whether they could advise the bill and answers because Sir William was attainted, and the Officers of State not properly in the field to give any judgment against them? and the President at last proposed, that in regard they were called on the diligence and the process intimated to Lord Advocate, who declined to support the petitions, to find that they were fallen, and to allow the decret pronounced to be extracted.