

1542. *June 22.* MARGARET JARDANE *against* LORD SOMERVILLE.

No 23.
Found as
above.

MARGARET JARDANE, relict of umquhil John Gladstones of that ilk, askit the Lord Somerville to be compellit to pay to her the maills of her terce lands, raisit be him sin the decease of umquhil Sir James Hamilton, superior of the lands of Liberton, who was for treason forfaltit. The said Lord *alleged*, That he had gotten, be the King's gift of the said lands of Liberton, property and tenandrie, sua that the said terce fell in forfaulture as weill as the lave of the lands. THE LORDS, be sentence decernit, that because the said Margaret's terce fell before the said Sir James superior's forfaulting, that the same terce could not be comprehended therein; and therefore, the said Margaret's lifetime she sould bruk her said terce, but any composition to the said donatar to the King to the lands foresaid that came in his Grace's hands be reason of the said Sir James's forfaulture.

Fol. Dic. v. I. p. 314. Sinclair, MS. p. 35.

* * * Balfour makes the following observation on this case :

GIF ony superiour happen to be forfaltit for crime of treasoun or lese majestie, his vassalis wife aucht and sould bruk the terce of the vassal her husbandis landis, gif the samin fell to her be ressoun of her said husbandis deceis befor the dome of forfaultour gevin and pronuncit aganis the superiour, albeit scho was not servit nor kennit thairto, nor in possessioun thairof before the said forfaltour; bot gif the terce fallis to ony woman efter the forfaultour, the same cumis under forfaltour in like maner as the twa part.

Balfour, (TERCE.) No 28. p. 113.

1570. *December 14.*

HOME of Manderston *against* TENANTS of Oldhamstocks.

No 24.
A tack mad with possession before the treason, and set for a sufficient rent, and for an ordinary endurance, is valid against forfeiture.

IN an action of removing persewed be Alexander Home of Manderston, donatar to the lands of Oldhamstocks, be forfaltig of N. Hepburn, Laird of Riccarton, against certain tenants of the said lands; the Tenants *answerit*, They had tacks for terms to run set to them be the said Laird of Riccarton, long before the said forfaulture, and they had been diverse years in possession of the said tacks given before the said forfaulture. The persewar *replyit*, That long before the date of the said tacks, the lands were become in the King's hands be forfaulture of my Lord Bothwell, immediate superior to the said Laird, *igitur*, the Laird of Riccarton's lands then came in forfaulture, and so the tacks were set be him who had no power to set them; the which reply was fund re-

levant, and in respect thereof, the exception repellit. This was but for ane part of the tenants; but other of the tenants *ansrit*, That they had tacks for terms to rin, set to them be the Laird of Riccarton, before the Earl Bothwell's forfeiture, and so be him who had power to set the same. The persewer *replyit*, That the exception should be repelled, because the Lord Bothwell superior, and also Riccarton proprietor being forfaitit, the King who wald not have regairdit an heritable infestment given be Riccarton at the time of the said assedation, but wald remove the heritable tenants, meikle more aught the tacksmen to be removit at the King's instance and his donatar's. The reply was repellit be the Lords, and tacks ordained to stand to the issue of their assedation, notwithstanding the forfeiture; because the King having the maills and duties of the lands is not defraudit as he is be the heritable infestments, and therefore sould not remove the poor tenants having leisomely obtained the said tacks be their awn geir, of them who were not, nor yet their superior convict of the said crimes wherethrough forfaulture might have followit; and the like practic was between John Lesly of N. and _____.

Fol. Dic. v. I. p. 313. Maitland, MS. p. 229.

. Balfour makes the following observation on this case:

ALL landis and tenandries haldin in chief of ony man that is forfaitit, and not lauchfullie confirmit be the King, cumis in his Hienes's handis be ressortin of foirfaulture.

Balfour, (FORFEITURE.) No 7. p. 562.

1610. July 14.

CAMPBELL *against* L. of LOCHNORAS.

A SUB-VASSAL being forfeited, he who is infest in his lands upon the King's presentation may remove the sub-vassal's vassal, albeit he have possessed forty or fifty years after the forfeiture; and needs not to reduce nor annul his infestment; because the forfeiture of his superior is a decret of Parliament, whereby his right, and all rights flowing from him, are in effect reduced. Campbell *against* Laird Lochnoras having right to lands in Cumnock from Riccarton Hepburn, who was vassal thereof to James Earl Bothwell, who, before his forfeiture, held them of Dunbar of Cumnock.

Fol. Dic. v. I. p. 314. Haddington, MS. No 1962.

1674. January 28.

GENERAL DALZIEL *against* The TENANTS of CALDWELL.

GENERAL DALZIEL, as donatar to the forfaulture of Muir of Caldwell, pursues the tenants of Caldwell to remove; who *alleged* absolvitor, because they bruiked

No 24.

No 25.

Found that by the forfeiture of a sub-vassal, not only his own right, but all rights flowing from him are carried.

No 26.

Tacks let for grassums received by the vassal, and