

1728. *July 24.*CARGILL *against* The RELICT and CREDITORS of M'DONALD.

No 67.

UPON the act 18th, Parl. 1690, it was questioned, if the onerous purchaser of a forfeited estate was obliged to account for the whole rents, without deducting the purchase money? The donatar of a forfeiture had paid in to the Exchequer ten years purchase for the lands, and it was *argued* for him, That it could not be the intention of the act, in restoring the ancient proprietor, to forfeit the innocent purchaser, who laid out his money upon the faith of the standing laws of the country. The defence was repelled, and the donatar was refused deduction of the price out of the rents. See APPENDIX.

*Fol. Dic. v. I. p. 315.*1724. *June 17.*MARGARET KER and MR THOMAS LINNING her Husband *against* ANNA KER Lady Kersland, and her HUSBAND.

No 68.

ROBERT KER of Kersland was forfeited anno 1669, and died in the year 1680; thereafter his spouse Barbara Montgomery deceased before the 1688, leaving behind them one son and three daughters. The son, who had the benefit of the act rescissory, and also by a special act had access to repetition of all bygones intromitted with by the donatar of his father's forfeiture, made a settlement of his estate, and died anno 1692. His sister Anna coming to the succession, she and John Ker her husband confirmed themselves executors to her father, mother, and brother; in which testament, among other things, were given up the bygone intromissions had by the donatar with the rents of the estate of Kersland.

The wife of a forfeited person, who survived her husband, died before the act 18th Parl. 1690. Her representatives were found entitled to a proportion of the bygone rents, as their mother's *jure relictæ* and *terce*.

Mrs Linning, one of the sisters, having been provided by her father in a portion, which she recovered from her sister Anna and her husband; upon payment Mr Linning and she granted a discharge, not only of that provision, but likewise of all interest they could have to the executry of her father and brother. Thereafter Mrs Linning and her Husband brought an action against Kersland and his Lady for payment of their share of the mother's executry, consisting of a third of the rents of the lands of Kersland, from the time of her father's forfeiture to his death, as belonging to her mother *jure relictæ*; as also of a third of the rents, from the father's death till the 1688, to which her mother was entitled by her *terce*; which subjects the defenders had recovered from the donatar.

It was *pleaded* for the defenders, *imo*, That the foresaid claims were cut off by the generality of the discharge above mentioned. *2do*, That the relict had