

or liege-man of two different States, (though that certainly does not hold, for a naturalization in one State does not excecme the person from the allegiance he owes to the State where he was born,)—and the pursuers were forced to give up both the old Roman and feudal laws, only said that this last was local, and varied in different countries, and that succession was a natural right which could not be refused without some statute or custom. The defenders admitted that aliens may purchase and even testate on moveables, (as they also may do in England, though they strictly adhere to the law that strangers cannot succeed in heritage) and quoted an old statute for it, Stat. Gul. Cap. 30. The Court unanimously found, that an alien could not by the law of Scotland succeed to heritage without being naturalized, and found that the pursuer is an alien,—for it was disputed, that since his grandfather was originally a Scotsman, though both his father and he were born in Germany and never were in Scotland, yet he was a Scotsman, which we repelled without any difficulty.

I should also have noticed, that the pursuer founded on the former judgment with Major Leslie not as *res judicata*, for the parties were different, and this point never pleaded. But as the Court knew that the Count was a foreigner, it was *pars judicis* to notice it though not pleaded. I should also have noticed, that the defenders quoted for them Craig in his book *De Successione*, which is much more positive against aliens than his treatise *De Feudis*, though the purpose of his book was to maintain King James's right of succession to the Crown of England.

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## FORFEITURE.

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### No. 1. 1734, July 5. JAMES LORD OXFORD'S FORFEITURE.

THE Lords adhered. My reason was, that the Clan Act provides that no conviction or attainder shall hurt or prejudice the right or diligence of any creditor, whereby I thought the case was to be considered as if there had been no attainder.

### No. 3. 1740, July 8. EARL of SUTHERLAND *against* ROSS.

THE Lords found, that for preserving the pursuer's casualty of recognition, it was necessary for him to enter a claim thereof before the Commissioners appointed to enquire into the forfeited estates, and that notwithstanding his right as superior of the lands subject to the recognition by the act 1<sup>mo</sup> Geo. for encouraging superiors, &c.—and found that no sufficient claim thereof was before them, and therefore found that he cannot now insist in this declarator of recognition. The first carried by a good majority, but the second only by the President's casting vote.—24th June 1741 Adhered.

### No. 4. 1740, Nov. 14. HUME of Billie *against* HUME of Ninewalls.

NINEWALLS being by decreet-arbitral bound to pay 4000 merks to Hume of Wedderburn for the superiority of some land which Wedderburn was decerned to dispone to