

yet a wrong addition, such as did not belong to the person, would vitiate an attainder; but he said there was here no wrong addition, for the claimant was certainly *of Clunie*, whether elder or younger, that is, proprietor or apparent heir, was not expressed, nor was it necessary; for if it is not necessary to give any addition, it is certainly not necessary to give a full addition, and the amount of the objection here is, that the addition is not full. But Lord Easdale thought that, by the language of this country, *of Clunie*, without more, denoted positively proprietor of that estate, and therefore that the proprietor was not attainted. Others of the Lords said, that this was a name of reputation, which was very often applied to those that neither were in fee nor possession; as in this very act, Alexander Gordon is designed *of Glenbucket*, though he has been many years denuded of that estate.

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1749. December 4. BINNING OF WALLYFORD *against* M'LEOD.

[Kilk. No. 1, *Litigious*.]

IN the year 1694 a second adjudication was led, within year and day of the first completed by infestment. In the year 1696, a process of maills and duties upon this second adjudication was commenced, and kept alive till the year 1699, when, upon an objection by the debtor to the grounds of debt, it was allowed to drop. Thereafter, in the year 1706, an heritable bond was granted by the debtor, whereupon infestment was taken. In a competition betwixt this voluntary right and the second adjudication, the Lords unanimously preferred the voluntary right, and found that the adjudger here was *in mora*, and so could not compete with the heritable bond, though within year and day of an adjudication completed by infestment, which the Lords found only gave him a preference among adjudgers, not in competition with voluntary rights; though the Lord President declared he wished the practice had been otherwise, and that a second adjudger could be considered in every respect as if his debt were contained in the first adjudication. As for the doctrine of *mora* in this case, see Dict. *tit. Litigious*, by which it would appear that this point is not quite settled yet. The Lord President objected, that unless the two adjudications were considered as led for the same debt, the ranking of these three creditors would be inextricable; for the first adjudger would be preferred to the annualrenter, he again to the second adjudger, and yet this second adjudger would come in *pari passu* with the first, and so be preferred to the annualrenter; which makes an inextricable circle. But the solution of this difficulty, as the practice now is established in rankings, is as follows:—Suppose, as Lord Stair does, that the subject is six, and each of the debts four; the first adjudger is ranked first, and takes four; then the annualrenter, to whom there remains two; but, says the second adjudger to the first, as it is not reasonable you should lose by this annualrent that is preferable to me, so neither ought you to profit by it; if it had not existed you would have drawn but three,—therefore let me have the one that you have above that number; so you neither

profit nor lose by the annualrenter, nor he by me, because he draws as much as he would have done if I had been out of the case. By this way of reasoning the division is into three, two, and one. This the Lords not understanding, did once, in a similar case, bring all the three creditors in *pari passu*. Vide M'Kenzie's Observations on Act 1661.

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1749. December 12. CLAIM of ——— CAMERON of LOCHIEL.

[Elch. No. 12, *Forfeiture*.]

IN the year 1716 John Cameron of Lochiel was attainted, and his son Donald claimed the estate from the Commissioners of Inquiry, and was found to be in fee of it by a disposition in 1706, the father having the liferent. In the year 1746, Donald was attainted, under the name of Donald Cameron of Lochiel, *younger*, and the Lords found this a good attainder, though it was said by Lord Easdale that the addition of *younger* of lands, always, according to our custom, expressed apparency or expectancy of succession, which could not be in this case, as Donald was in the fee of the estate, and the father, John, though alive, yet being attainted, was to be considered as not existing; so that this was not the proper designation of Donald, neither was it his name of reputation, since he was never known by that name, but always by the name, *of Lochiel*, simply.

To which it was ANSWERED, That he was properly enough designed *younger*, in distinction from his father, who was commonly known by the name of *Old Lochiel*, more especially as the father had the liferent of the lands; that the reason why the son was not commonly known by the addition of *the younger* was, that the father never lived in this country, but always in France; but, had they been both apprehended and brought before the Court of Justiciary in the year 1746, a warrant for execution would very properly have been craved against Donald Cameron of Lochiel, *younger*.

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1750. January 4. ——— against ———.

[Kilk. No. 1, *Rebellion*.]

THE question here was concerning a horse that had been taken by the rebels in the 1745, and was retaken by an officer, and afterwards found in the possession of another officer, from whom the proprietor now demands him.

The Lords found, That the second officer was obliged to restore him, or pay the price of him at the time he was challenged.

*N.B.* Lord Elchies and the President thought that the owner must pay the price that the possessor paid for him to the first officer.