therein mentioned after the 1st of August 1714 should be void and null. We were all of us greatly difficulted in this question (except the President, who said he thought the act lasted only during the Rebellion 1715, to which opinion he was chiefly determined by the clause;) but as the lawyers at the Bar hinted that they would be able to prove the onerous cause, we all agreed, before answer, to order them to give in a condescendence of them, and of the manner of proof;—and on advising them, 25th July, we unanimously sustained the claim in general.—Affirmed in Parliament 28th March 1751.

No. 9, 10. 1749, Nov. 15. LORD PITSLIGO'S CASE.

ALEXANDER LORD FORBES of Pitsligo claimed the estate, for that only Alexander Lord Pitsligo was attainted, whereas by his patent produced his title was Alexander Lord Forbes of Pitsligo; although he was always known by the name of Lord Pitsligo, always signed Pitsligo, was uniformly so named in the rolls of Parliament, and so named in Lord Register's list, a copy of which was reported to us by the House of Lords, and so in several acts of Parliament and of Convention, in many adjudications of his estate, and conveyance by Foveran to him, though in many of the bonds he was named Lord Forbes of Pitsligo, but signed Pitsligo, and in all his charters and retours Lord Forbes of Pitsligo. The questions were three, Whether the dignity rested on the word "Pitsligo," or on all the three words, "Forbes of Pitsligo?" 2dly, Supposing the last, whether that would vitiate the act of attainder, *modo constat de persona?* and 3dly, If there is sufficient certainty that the claimant is the person intended to be attainted. As to the first, the President, who in effect spoke last, (that is last but Easdale, who after him repeated a second time some things that he had said before,) was clear that Pitsligo was the sole title of the Peerage. He argued long and well, and said that though he could by use alter the title, yet his constant subscriptions, rolls of Parliament, &c. were sufficient to explain and ascertain on which of the words the Peerage rested, and mentioned our act anent Peers subscribing by their titles. Tinwald was of the same opinion, and observed that the Parliament could have no other way of naming or designing persons but as they were known, and both of them thought, that the precedents adduced of objections that would be good at common law would not reach acts of attainder in Parliament. But neither of them said much now, other than what was contained in Lord Advocate's Information. I was forced to speak before them, four having spoken before me and all the rest declining. As to the first point, though I inclined much to the same side with the President, yet by all the precedents and authorities in the Informations, I was so doubtful, that if it depended on that point, I own I did not think myself at liberty to give any vote. As to the second, the claimant maintained, that at common law, the proper name and sirname must be expressed, and if the person is dignified as a Knight or a Baronet the name of the dignity must be added, and if of a higher dignity, that that becomes part of his name, and that the omission of any of these vitiates the whole proceeding;—and I own that they had brought great authorities to prove that these rules must be observed in the common Courts of law;—but then I thought that did not hold in acts of attainder, and that if it certainly appeared who was the person intended, that the act must be effectual notwithstanding the omission of name, sirname, or

legal designation, and that the Parliament could attaint by description without any name; —first, from the reason of the thing: The inferior Courts are limited by the common law, and by the statutes, and all proceedings not agreeable to them were void; but the Legislature is under no limitation. They could alter the common law. They could enable the inferior Courts to proceed to outlawries where the persons were described, though not named;—and *multo magis* may they do it themselves; and there cannot be a defect in the will, where it with certainty appears who was the person meant to be attainted;—and I referred for precedents to some acts in King Charles the Second's time, quoted by the Lord Advocate, and added further 5th act, 8*vo* Guliel. III. where not only many persons are attainted without additions, but also several without Christian names, which were left blank; and the act 42 *anno* 1*mo* Georgii I. where Mr George M'Kenzie, son to Delvin, is attainted in these words, though he had an employment, an Advocate in this Court; and James Ogilvie, commonly called Lord Ogilvie, though that title did not in law belong to him; Robert Campbell, *alias* M'Gregor, commonly called Rob Roy, &c.; and whereas at common law inferior dignities of Knights or Baronets must be added, there are no less than five Baronets there attainted having "Sir" prefixed to them, without saying whether they are Knights or Baronets, and in fact I have heard that one of them was neither, viz. Sir John M'Kenzie of Coull, and none of these persons were advised to object to the attainders, though some claimed their estates on other grounds, and several of them sold, and in those cases where the Christian name was omitted, or the addition or the dignity, the Legislature could not overlook the omission, and must know that it would be a defect at common law. I also quoted the 3d act 13 and 14 Guliel. III. attainting the Pretender, which is under the name of the pretended Prince of Wales without any other, though it is plain they did not acknowledge that that was his legal title, or that he was apparent-heir of the Crown, and therefore call him pretended; and lastly I quoted act 17*mo* Geo. II.—the eldest, or any other son of the said Pretender, that should land or be found in any of his Majesty's dominions, and that in those very words, without name or sirname, or legal designation,—and therefore I concluded that whatever words the Legislature used in attainting any person, the attainder must be effectual, *modo constat de persona;* and as to the 3d, that *constat de persona*, because the whole names in the act agree to the claimant, and they agree to no other person, and here lies the difference between this case and General Gordon of Inveray, and Thomas Ormond, Knight, quoted for the claimant; that Major-General Thomas Gordon, laird of Auchintoul, could agree to no man that was not of the name of Thomas, and it signified not that there was no other person that it could apply to;—it was enough that it could not apply to him, though if the name of Thomas had been left out, and the Christian name left blank, the attainder would have been good, as in the statute 8*vo* Guliel. III. C. 5, *et sic de ceteris.* Upon the question, it carried that the claimant was not attainted, and to sustain the claim. The Court was quite equally divided, six to six, Lord Leven being at London, and Minto and Haining both indisposed. For the interlocutor were Drummore, Strichen, Dun, Monzie, Shewalton, and Easdale. Against it were Milton, Kilkerran, Justice-Clerk, Murkle, Elchies, and the President, who had no vote, and I mark them in the order we happened to vote.—Reversed in Parliament unanimously, 1st

February 1750, after four days hearing, and getting the unanimous opinion of the Judges, upon the same grounds that I argued.

No. 11. 1749, Dec. 1. DUNCAN M'PHERSON'S CLAIM of CLUNIE.

EVAN M'PHERSON of Clunie being attainted of treason while Lachlan his father was alive, who died only June 1748; after his death Evan disponed the estate of Clunie to Duncan his infant son, and for him the estate was claimed, for that Clunie did not belong to his father Evan, while Lachlan his father was alive, so that he was not M'Pherson of Clunie, and therefore was not the person, though that was the designation always given him and taken by himself,—and as he had been some years married to Lord Lovat's daughter, there was little doubt that the estate was conveyed to him also; however, it might be difficult for the Lord Advocate to recover the marriage-settlement. But the Lords this day, (as I am told, for I was in the Outer-House) rejected the claim, *sed renit.* Dun *et* Easdale.

No. 12. 1749, Dec. 1, 15. LOCHIEL'S CASE.

FIND John Cameron attainted. *Pro* Milton, Strichen, Justice-Clerk, Monzie, Murkle, Shewalton, *et me.* *Con* was Easdale. *Non liquet* were Drummore and Dun. The President gave no opinion,—but during the debate all the Bar seemed clear for the interlocutor.

No. 13. 1750. Feb. 15. DEMPSTER *against* LADY KINLOCH.

GEORGE DEMPSTER in November 1742 got an heritable bond from the deceased Sir James Kinloch, father to the forfeiting person, and James Kinloch afterwards Sir James his son, now forfeited, for L.20,000, and was immediately infeft. This money was intended for payment of the debts, but as they had immediate use only for L.8735 of the money, Dempster gave them an obligation for the remainder of the money and interest thereof on demand, and in December 1743 retired his obligation with a short discharge by both father and son acknowledging payment, which was said to be holograph of the father except the date of the son's subscription, which being signed at a different place was said to be holograph. The son's Lady was about the same time infeft in her jointure, but Dempster's sasine was first registrated. Lord Advocate objected to the debt that it was suspicious, the whole money not being advanced at the date, and looked like a fund of money to the Rebels to carry on the Rebellion, and therefore insisted that it fell under the clause in the vesting act as granted after 24th June 1742, and the Lady objected to his preference on the priority of his registration that he could only be preferred for the sum then advanced but not for what was advanced after her sasine was registrated. As to the first, had the bond been only by the forfeiting person there might have been difficulty, but as Sir James the father who was not forfeited was proprietor of the estate, his bond could not be the worse for being also granted by his son, and therefore we made little difficulty of sustaining the claim,—but as to the preference the Court was greatly divided. The President was clear that he could only be preferred for the sum then advanced, and that it was no debt till the money was advanced. Others again (*inter quos ego*) thought that Dempster was a real creditor on the estate from the date of his infeftment for the