much, that the adjudication was not even sustained as an interruption of the negative prescription, although it evidently enough appeared to have been only an escape in the writer who drew the bill of adjudication. No 3.

Fol. Dic. v. 3. *p.* 204. *Kilkerran,* (GROUNDS and WARRANTS.) *No* 1. *p.* 227.

1743. *July* 5. HAMILTON and BAIRD *against* HUNTER.

No 4.
A mistake in the bond of cautionry in a suspension, with regard to the date of the bond suspended, is not sufficient to liberate the cautioner.

WHERE the bond of cautionry in a suspension referred to the bond charged on, as granted for the sum of 8000 merks in the year 1738, whereas the bond produced for the charger bore date in 1728, upon which ground the cautioner, at discussing, pleaded to be free, in respect no such bond was produced as that referred to in his bond of cautionry; the LORDS, after examining the doers for the parties, and the instrumentary witnesses to the bond of cautionry, found, 'That the bond of cautionry had only, through mistake, misrecited the bond charged on, and that the said misrecital in the bond of cautionry was not sufficient to liberate the cautioner.'

Fol. Dic. v. 1. *p.* 205. *Kilkerran,* (FALSA DEMONSTRATIO.) *No* 1. *p.* 188.

1749. *November* 16.

JOHN DICKIE, Factor for the LORD FORBES of Pitsligo, *against* The KING'S ADVOCATE.

No 5.
Alexander Lord Forbes of Pitsligo was attainted by the name of Alexander Lord Pitsligo. He claimed his estate as not forfeited, he not having been designed by his true name and title. The Court of Session sustained his claim; but the House of Lords reversed the judgment, as it was proved that he was commonly known by the title of Lord Pitsligo.

A CLAIM was presented in behalf of Alexander Lord Forbes of Pitsligo, for his estate, which had been surveyed by order of the Barons of Exchequer, as forfeited, for that he was not attainted.

Answered, He was attainted by act of Parliament, by the name of Alexander Lord Pitsligo, which was good.

Replied, The attainder cannot affect him, not mentioning him by his true title of Lord Forbes of Pitsligo.

Pleaded for the Claimant; The common law of England, by which this cause is to be tried, always required, that, in judicial proceedings, the party should be described by his true name: Further than which it was statute, 1st Hen. V. c. 5. that in every original writ of actions personal, appeals and indictments, and in which the exigent should be awarded, to the names of the defendant's additions should be made, which if it were not done, the outlawry to be pronounced on such writs, should be void. The claimant has no occasion to plead, that this statute extends to Parliamentary proceedings; as the defect here is not in an addition, but in his name; part of which the title of dignity of a peer, or person of inferior dignity makes, Coke, vol. 2. fol. 665. and 666. and vol. 4. fol. 363. And this name was so necessary, that if pending any action, the

No 5. plaintiff acquired a new dignity, his action was abated; until the inconveniency was remedied by statute 1st Edw. VI. c. 7. which was not extended to the dignity of baronet, as not being mentioned in the Statute 1. Sid. 40. Littl. rep. 81. Cro. car. 104.

An outlawry was reversed of William John George, for that having been indicted by that name, he was named in the exigent William George. 1st Roll. rep. f. 313. the King *versus* George.

William Dethick, king at arms, was indicted; which was held void, for that he should have been called Garter; which, in virtue of his patent, bearing *nomen tibi imponimus Garter*, made part of his name. Leonard's rep. f. 148.

Sir Henry Ferrers, baronet, being indicted by that name knight, it was abated, for that he was never knighted. Cooke's rep. f. 371.

An indictment against John Jermain, knight, was abated, for that he was knight and baronet; and this last was a necessary part of his name, because it was a dignity. 3d Salk. f. 235. and 236.

An outlawry against Henry Lord Dover was reversed, on a writ of error, for that he had been created by patent *Baro de Dover*, Shower's rep. f. 392, 393.

Thomas Ormonde was attainted by Parliament by the name of Thomas Ormonde chevalier, and he was not a knight; and he lost nothing, for that knight was part of his name. This case is related by the judges, and made the foundation of their argument in the Year Books. 21st Edw. IV. f. 71. and 72.

Major General Thomas Gordon, Laird of Auchintoull was attainted by act 1st Geo. I. whereupon exceptions were presented to the Court of Session, claiming the property of the said estate, for that the General's name was Alexander; which were sustained, and the decree affirmed by the House of Peers, 1st Peere Williams's rep. f. 612. And the like judgment was given in the case of Patrick Farquharson of Inverey, named in the act Alexander. *See* APPENDIX.

Charles Longueville petitioned for a writ to Parliament, by the title of Lord Ruthyn, as heir to Reginald Grey of Ruthyn, called by writ of Edw. III. which being referred to the House, was found defective; and he amended his petition, claiming the title of Lord de Grey, by which his predecessor had been summoned, and was found entitled to a writ, 5th February 1640.

Sir Richard Verney claimed the barony of Broke, as heir to Sir Robert Willoughby, summoned 7th Hen. VII. by writ directed *Henrico Willoughby de Broke, chevalier*; but was found, 10th January 1694, to have no right: Afterwards he claimed, in general, the peerage of his ancestor; whereupon it was found, 3d February 1695-6, that he had no right to the title of Lord Broke; but, 17th February, that he had a right to a writ, by the title of Lord Willoughby of Broke.

Pleaded for the King's Advocate, The attainder is good, not only as the Claimant is described in the act by his true title, but as he is described by that which he and his ancestors since they were ennobled, have constantly and uniformly borne and been distinguished by. Selden on Titles of Honour, Part 2.

c. 5. § 17. says, 'That in England, in earlier times after the Norman conquest, 'all honorary barons were, for ought appears, barons only by tenure, and 'created by the King's gift or charter of good possessions.' And § 28. speaking of barons by patent, says, 'It is most frequent, in these latter times, to have 'the sirname added in the creation: As A. B. is created Baron B. of C. where 'C. is the place that denominates the Baron: But the sirname only is often 'used as the title of honour in common expression.' According to this author, Lord Pitsligo would have been the proper title, if this had been an English peerage. Nor is there any difference in our practice or law in this respect. The family have always been called by this title, in the acts and records of Parliament, wherein they are mentioned, and marked so on the rolls: They have signed bonds by it, on which adjudications have been led against the Lord Pitsligo, and these adjudications being acquired by a friend, were made over, by contract, to the same, which he so signed 1723; but 1725 expede a charter thereon, *Domino Forbes de Pitsligo*, thereby allowing these to mean the same person, as the procuratory of resignation was to the Lord Pitsligo: And the respondent is persuaded nobody ever heard of Lord Forbes of Pitsligo till this question was stirred. But, allowing the title to be Forbes of Pitsligo, the attainder is good, as the Parliament is not tied down by the rules of procedure in inferior courts: Their power cannot be doubted to attaint any person, by a sufficient description, as they might have enacted, that inferior courts might have proceeded in that manner: Neither can it be doubted, to have been their intention to have comprehended this claimant, when they used the only title by which he was known, and by which witnesses could depose against him. Examples may be given of many acts of attainder; Oliver Cromwell, and the other regicides, were attainted without any additions, and he after his death; and the intended assassins of King William by sirnames, wrote sometimes with an *alias*, and without Christian names. Thus the examples of procedure at common law are not to the purpose, as those rules do not bind the Parliament; and those of Parliamentary proceedings do not apply to the case. Thomas Ormonde was called knight, which he was not; Auchintoull and Inverey had each mistaken Christian names, but the title given to the claimant applies wholly to him, and to him only. The cases of Grey of Ruthyn, and of Willoughby of Broke, at most shew, that in claiming a title of honour, it must be exactly set forth: Not that an attainder, by these curt titles, would not have been good. In the first the petition was amended, which was easily done, and might have been thought necessary on a small mistake. The other case was, that Sir Robert Willoughby, the second Lord, left only co-heirs, whereof his grand-daughter, Lady Elizabeth Greville, became at last sole heir, whose grand-son, Sir Fulk Greville, was created Lord Broke of Beauchamps, by patent to him and his heirs-male, remainder to Robert Greville; and the petitioner claimed the barony of Broke, as belonging to Fulk in fee, he being descended of Elizabeth

No 5.

No 5. Lady Verney, his sister and heir. Against which, it was *objected* by the Attorney-General, that the peerage having fallen to co-heirs, it was in the King's power to hold the same in suspense or abeyance, or to extinguish it. The petitioner was found to have no title; which alarmed several Lords, who had only daughters, and thereupon the House took the question into consideration; and resolved, that if a person be summoned to Parliament, and sit, and dying, leave issue one or more daughters, who all die, one of them only leaving issue, such issue has a right to demand a summons to Parliament: On this resolution Sir Richard Verney renewed his petition; and, in consequence of it, they found he had right to the peerage of Willoughby of Broke, as they could not find him entitled to that of Broke, in consistence with their former determination, and as there was another Lord Broke in the House. Collins's Proceedings concerning Baronies, by Writ and other Honours, published 1734.

It appears, from what is related in Coke's Reports, in the case of Doctors Ayray and Alcock, Part 11. § 19. *et seq.* that no such preciseness is regarded in Parliamentary proceedings: There it is said to appear by the books, that by the statute *de templariis* 17th Edw. II. wherein mention is made, in the preamble, *de adnullat. ordin. militiæ templi*, the effects of the Templars were assigned to the Hospitallers, which had been always held good; though, in that act, neither of these corporations were called by their proper names. And even in proceedings before the inferior courts, if a person indicted plead misnomer of his sirname, the King may reply, *connu par une nosme et l' autre*, Hales, H. P. C. vol. 2. f. 238, but otherwise in the case of an appeal: On indictments, misnomer of the christian name has been held a good plea; but, by later books, the reply of *connu par une, &c.* has been sustained. And Hawkins, chapter of Indictments, § 68. says, no indictee can take advantage of a mistaken sirname by plea in abatement, or otherwise.

Replied, The title was given by the patent, which no usage could change; neither has the usage been such here as is alleged; but the true title used in all deeds of importance relating to the family; as in the charter of erection of a burgh of barony in their favour, 13th July 1681, and ratification thereof; and charter on the conveyance of several apprisings, 25th July 1725; and thus also they are designed in deeds granted by them; and it were preposterous to plead, they could be affected by the titles given them, by a creditor's agent in leading his diligence. Subscriptions are of no consequence, as it is usual for Peers' sons to subscribe by their titles of courtesy; and that to protests in the House of Peers, to which they have been called by proper titles of their own; as little can it be regarded that they have been so named in the act of supply amongst the commissioners, the whole names being inserted very inaccurately; as is the case likewise of the rolls of Parliament, which are only jottings by the clerk, of the members present; and the like inaccuracy occurs in the journals of the House of Lords, Collins, f. 328. The cases condescended on have not been sufficiently answered, it appearing from those relating to proceedings at law,

that the title of dignity made a necessary part of the name; and for the Parliamentary cases, that in them the name was necessary; and the attainders that have been cited on the other side, do not affect this reasoning, as the statute of additions makes only mention of writs, consequently does not extend to Parliamentary proceedings; but the name was necessary at common law; and those persons who were attainted without names, were unknown people, whom the Parliament, to shew their detestation of their crime, were glad to proceed against by such names as they could learn; but they having nothing in the country to make it worth their while, never brought the validity to a trial. The reply of *connu*, &c. does not apply to names of dignity, which are matters of record, Coke's Inst. V. 1. f. 16. Hales, H. P. C. vol. 2. f. 238. Skinner's Reports, f. 520. Hawkins, P. C. vol. 2. § 69. And even with regard to private names, the abating of an indictment was of little consequence, where the party was obliged to tell his true name, and might be indicted of new; and thence it has been said, as cited by the respondent, that he should not be allowed to plead it in abatement; but yet an outlawry might be reversed on this ground, H. P. C. V. 2. f. 460. Jenkin's Reports, cent. 3. case 4. The case of the Templars was only a grant of the lands of that incorporation, which had been before dissolved, to the Hospitallers; and grants are sustained by descriptions of the grantee, which would not be good in law proceedings against them, as in the case cited betwixt the Doctors Alcock and Ayray. No 5.

THE LORDS sustained the claim.

Act. *R. Craigie, Ferguson et* alii. Alt. *Advocatus, Solicitores, et A. Pringle,*

ORDER of the HOUSE of PEERS on this Claim.

Die Veneris, February 1st 1750.—" After hearing counsel, as well on Monday and Tuesday as yesterday and this day, upon the petition and appeal of William Grant Esq; his Majesty's Advocate for Scotland, for his Majesty's interest, complaining of an interlocutor of the Lords of Session in Scotland, of the 16th November 1749, as also upon the answer of Alexander Lord Forbes of Pitsligo, put in thereunto, the following question was put to the Judges, viz. The great grand-father of the respondent being by letters patent under the Great Seal of Scotland in the year 1633, created a Peer of Scotland, by the title of Lord Forbes of Pitsligo, and the respondent and his ancestors claiming under the said letters patent, having commonly used and subscribed themselves to deeds and other instruments, by sometimes the name or stile of Forbes of Pitsligo, and sometimes Pitsligo; and having been commonly described and known in legal proceedings and otherwise, as well by the name and stile of Lord Pitsligo, as of Lord Forbes of Pitsligo; and the said respondent and his ancestors having

No 5. been always entered in the rolls of Parliament of Scotland before the union, and called and described in acts of Parliament of Scotland, except in one private act of ratification passed in the 1681, by the name or stile of Lord Pitsligo; and it not being proved or alleged in this cause, that any other person beside the respondent, was at, or before the passing of the act of Parliament herein after mentioned, called or known by the name or title of Lord Pitsligo; and the respondent not having surrendered himself to justice, on or before the day specified in the act of the 19th year of his Majesty's reign, for attainting Alexander Earl of Kelly and others therein named of high treason, whether the respondent is by virtue of the said act attainted of high treason, by the name or title of Alexander Lord Pitsligo? Upon which the Lord Chief Justice of the Court of King's Bench acquainted the House, that he having conferred with his brethren, were unanimously of opinion, that the respondent was very fully and effectually attainted by the said act of the 19th year of his present Majesty; whereupon ordered and adjudged, that the said interlocutor complained of in the said appeal, be, and is hereby reversed, and the respondent's claim in the Court of Session, be, and the same is hereby dismissed."

Fol. Dic. v. 1. *p.* 205. *D. Falconer, v.* 2. *No* 95. *p.* 106.

No 6.
An attainder, by description from an estate of which the person was apparent heir, was sustained.

1749. *December* 1. DUNCAN MACPHERSON *against* The KING'S ADVOCATE.

A CLAIM was presented in behalf of Duncan, son of Evan, and grand-son of Lauchlan Macpherson of Cluny, for the said estate, surveyed by order of the Court of Exchequer, by Janet Fraser his mother; for that it had not belonged to any attainted person, but to the said Lauchlan, by whose death on the last day of June 1746, it descended to Evan, and by disposition from him, 22d April 1749, was conveyed to the claimant.

Answered, Evan Macpherson of Cluny was attained by act of Parliament 19th Geo. II. consequently the claimant can derive no right by disposition from him; the title of Cluny was a proper description of him; or admitting it was not, yet, as was admitted in the case of Lord Forbes of Pitsligo, the statute of additions not regarding proceedings in Parliament, he was sufficiently described by his name and sirname.

Replied, It is not admitted that an attainder in Parliament would be held good without some further description; but supposing it, the case is different where something is added which does not apply to the person, as was determined in the case of Thomas Ormonde; the title 'of Cluny,' without saying 'younger,' as is ordinary when a title is given to an apparent heir, must either denote the estate of the person mentioned, or his place of residence; and by neither is he right described, as he was not proprietor of that estate, and there were several