

1751. December 21.

MACDONALD of Clanronald *against* The KING's ADVOCATE.

No 8.

A mistake in the christian name found to vitiate the attainder.

MR ALEXANDER MACKENZIE, Clerk of Session, standing seized in the lands which had made the estate of the family of Clanronald, disposed them in liferent to Donald Macdonald elder of Benbecula; and failing him by decease, in liferent, to Ronald Macdonald younger of Benbecula, and in fee to Ronald Macdonald eldest son of the said Ronald M'Donald younger of Benbecula, and the heirs-male of his body; which failing, to Donald Macdonald second son of the said Ronald Macdonald younger of Benbecula: And, at the time of the late rebellion, and of the general act of attainder which followed it, the said estate remained vested in the said Ronald younger of Benbecula in liferent, and his son Ronald in fee.

Amongst the persons attainted by the said act was, Donald Macdonald of Clanronald junior, Son to Ronald Macdonald of Clanronald; and thereupon the estate was surveyed.

The father and son claimed their respective rights of liferent and fee; and the first claim was allowed without objection: But to the second it was said the claimant was the person intended to be comprehended in the act of Parliament, of which there was sufficient evidence, notwithstanding the mistake of one letter of his name; and therefore he stood attainted. The present case differed materially from the two known cases of General Gordon, and Farquharson of Inverey, in which the names were totally different.* Also, there was here such a description as reduced the person intended to an absolute certainty, and would not apply to any other than this claimant; namely, that he was the younger of Clanronald, son to Ronald Macdonald of Clanronald, which imported as much as if he had been eldest son and apparent heir of Ronald Macdonald of Clanronald. General Gordon and Farquharson were designed from the names of their estates; and as different places have the same name, this made no certainty; but this family was not designed in this manner, but took their designation from being chief of that clan, part of the great clan of Macdonalds; which designation 'of Clanronald,' could agree to nobody but themselves; and 'junior' only to this claimant.

Lands given to Robert Earl of Pembroke, whose name was Henry, and to George, Bishop of Norwich, whose name was John, were held good grants, Coke, 1st Inst. f. 3; and Oliver Comwell was attainted after his death, and others, without any addition, as Thomas Dolman, 13 Car. II.; and Simon Parry, 22 and 23 Car. II. And in Scotland, by act of Parliament 1669, several sentences of forfeiture pronounced in the Court of Justiciary were approved; and amongst these, against Caldwell, eldest son to the Goodman of Caldwell, and Maclellan of Balmagachan.

* See p. 4156.

† These sentences are expressly rescinded, Act 18. Parl. 1690.

The difference betwixt the name in the act, and that borne by the claimant, consists only of a letter ; and such small difference has been found of no consequence, as of Wakinshaw for Walkinshaw. No 8.

Pleaded for the claimant ; This case is precisely the same with that of General Gordon and Inverey, where the remaining part of the description fitted as exactly as here ; and the difference was of the christian name, whereon these gentlemen were held not attainted ; and these reasons were insisted on, as related by Peere Williams, the Reporter of General Gordon's case, that execution could not be awarded against Alexander, on an act attainting Thomas ; nor could a pardon to Thomas be available to Alexander, if he should be afterwards convicted : That there was in this family a second son, Donald, to whom the whole description applied, closer than to this claimant ; and it was not reasonable to fix on the addition, and drop the name, any more than drop the name and take the addition : A single letter might not be considered, when it did not vary the sound of the word, as in Walkinshaw ; but Ronald and Donald were distinct names, and considered as such in this act, where they both occurred.

Observed, That whoever was intended to be attainted by act of Parliament, was well attainted, however described ; but there behoved to be legal evidence of the intention : That it was improper to speak of a misnomer in an act of Parliament ; for if it appeared any person's name was mistaken, he would, notwithstanding, be reached by the act, the intention whereof behoved to take effect : That in the case of Lord Pitsligo, the whole description agreed to the man, only it was defective of his full title, and therefore he was attainted, as there was evidence he was intended by the act ; and here, if there had been no christian name, the description would have hit the claimant, which, as it stood, did not : That Donald Macdonald younger of Clanronald was attainted ; and, when he could be found, the act would have its effect against him.

A proof was led, that the claimant's name was Ronald : and it was also proved, he was ordinarily designed younger of Clanronald.

THE LORDS sustained the claim.

Act. R. Craigie, Ferguson, & Lockhart.

Alt. Advocatus.

Fol. Dic. v. 3. p. 206. D. Falconer, v. 2. No 250. p. 307.

1753. July 6. JAMES DALGLIESH *against* ROBERT HAMILTON.

DALGLIESH pursued a ranking and sale of the lands of Wester Abden, and called as the common debtor, 'George Hamilton cooper in London, son and apparent heir to the deceased George Hamilton of Wester Abden.'

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No 9.

In a ranking and sale the objection sustained that the common