

pursuer, where the addition or defect of a letter makes a considerable difference in the surname, they are not to the point, as such alteration changes the word from one surname to another, which is not the case betwixt the words Walkinshaw and Walkinshaw.

To the *second* observation it was *answered*; That his father William Walkinshaw of Scotstown being dead before the attainder, the addition of Scotstown was a proper description of him according to the common usage in this country; as he was his only son, and which, by the established custom, is always given to the eldest son after his father's decease, without regard to his being infest or not; so that, it is believed, it would have been an error in the attainder, if he had been described by the addition of merchant in Glasgow, as he more properly belonged to the class of landed men.

To the *third*, it was *answered, imo*, The meaning of the statute is no more than to make the person certain, by describing the man by his name, surname, and estate, if a landed person, so as one man might not be troubled for another. *Vid. Coke's Instit. part 2. p. 270. 2do*, Whatever operation the statute may have upon outlawries, it cannot apply to a parliamentary attainder, where the authority of the legislature dispenses with all forms, and must be confessed to make the same absolute, wherever the person is sufficiently described; but, at any rate, these objections come too late; as the pursuer has not only allowed his estate to be seized and surveyed, but likewise has obtained a pardon from his Majesty, whereby it is evident he understood himself to be described by the act.

THE LORDS found there is no misnomer of the said act, with respect to the name and designation of John Walkinshaw of Scotstown; and therefore repelled the allegiance founded thereupon.

*C. Home, No 30. p. 56.*

1751. December II.

SUTHERLAND of Meikletorboll *against* MONRO of Auchany.

ROBERT SUTHERLAND of Meikletorboll, arrested in the hands of William Monro of Auchany, as debtor to Alexander Mackenzie of Ardloch his debtor, in the value of certain cattle carried off his grounds by him, and pursued a furthcoming.

*Answered*, Ardloch was concerned in the rebellion, and information being given to the Earl of Sutherland, sheriff and lieutenant of the county of Sutherland, that he was in May 1746, in the neighbourhood of his own estate, in that county with a body of men in arms, the Earl ordered Auchany to drive away these cattle, to distress him and the rebels, which he did; and the cattle being disposed of by the Earl's order, the defender is liable to no action for what he did

No 56.

The Lords found that no action lay at the instance of a creditor of a rebel, who was comprehended in the act of indemnity, for the value of goods taken from him during the rebellion.

No 56.

at that time for suppressing the rebellion ; but is justified by the act of Parliament made to that end.

*Pleaded* for the pursuer, He knows not that Ardloch was concerned in the rebellion ; which if he was, is a matter that cannot be properly enquired into now, as he is indemnified ; he is therefore fully re-instated in all his former rights ; he has property in his effects, and action for recovery thereof ; the pursuer is not insisting against Auchany for the penalty of spulzie, or for the value of cattle intromitted with, and employed for the public service, or even disposed of by order ; he might defend himself for these acts, as being done against a rebel in open hostilities ; or if that was not the case, upon the indemnity, if the fact was committed for suppressing the rebellion ; but this is a pursuit for cattle, still in his possession, or what he has converted to his own use ; and the indemnity was never intended for defending any person in converting to his own use the property of another, either innocent, or who must be held as such.

*Pleaded* for the defender, It is a material fact that Ardloch was in the rebellion ; as in that case it was just to make war against him, to seize his effects, and he can have no action for recovery thereof ; if the effects of a good subject should be seized for suppressing the rebellion, he might vindicate what of them were extant ; but he could have no action for the value of any not extant, because the intromitter was justified by the indemnity ; and it might be doubted whether he was not excluded from any action for the value of what was used or disposed of, though by the intromitter for his private use, which was indemnified ; but the goods of a rebel were lawful prize ; at least though vindication should be competent, there could be no action for the value.

THE LORDS found, that if Ardloch was concerned in the rebellion, no action did ly.

Reporter, *Strichen.* Act. *Lockhart.* Alt. *H. Home.* Clerk, *Forbes.*

*Fol. Dic. v. 3, p. 233. D. Falconer, v. 2. No 247. p. 302.*

1752. February 26.

JOHN STRACHAN, late Tenant in Redfoord, against LIEUTENANT ARCHIBALD MACLAUHLAN.

No 57.

An officer of the army seizing, during the rebellion, a person's goods who is suspected of being concerned in the rebellion, and on that account made prisoner, and disposing of

INFORMATION having been given to the officers commanding his Majesty's troops, who were in pursuit of the rebels in 1746, that John Strachan had been in the rebellion, they ordered him to be apprehended, and his goods to be seized. Accordingly, on the 26th of February 1746, Lieutenant Maclauchlan, with a party of soldiers, apprehended Strachan in his own house, seized all his horses, cattle, and sheep, and carried him prisoner to Aberdeen ; and the goods were delivered to the Commissary for the army ; who, by orders from the general officers, sold them, and accounted to the government for the price. Strachan remained prisoner for some months, but afterwards was dismissed.