

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 attainer, 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 surname.

*Replied,* It is not admitted that an attainer 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

other Evan Macphersons residing upon it ; it is not the custom of Scotland to design a man of a place from his residence, nor in England without some further addition.

No 6.

*Duplied,* The description neither relates to his right of property, nor place of residence, but is a popular appellation, well known in this country, where gentlemen are named of their estates, and retain the same titles after they have sold them ; which are also given to their eldest sons.

THE LORDS repelled the claim.

*Fol. Dic. v. 3. p. 206. D. Falconer, v. 2. No 104. p. 119.*

1749. December 16. CAMERON against The KING'S ADVOCATE.

JOHN CAMERON claimed the estate of Lochiel, surveyed by order of the Barons of Exchequer, as fallen to him by the decease of Donald Cameron his father ; for that he was not attainted.

*Answered,* He was attainted, by act of Parliament, by the name and description of Donald Cameron the younger of Lochiel.

*Replied,* This description does not apply to him, he having been the absolute and only proprietor of the estate ; John Cameron, the claimant's grand-father, was attainted by act of Parliament, on occasion of the rebellion in 1715 ; after which he was incapable of holding property within the kingdom ; and Sir Evan Cameron his father, disposed his estate to Donald the claimant's father, who was constantly and uniformly designed of Lochiel. This case differs from that of Cluny, wherein the heir apparent was held to be well described by reference to an estate, of which he had the expectancy, in consideration of the ordinary manner of speech in the country ; but John Cameron was in no sense whatever of Lochiel ; consequently the term younger could not apply to his son.

*Duplied,* John Cameron continued to be properly enough, according to the use of speech, called Lochiel, and old Lochiel, notwithstanding his attainder ; and, as he was attainted by that name, behoved, if he had got a pardon, to have been pardoned by the same ; people loose their rights by forfeiture, but not their ordinary names ; and these designations do not necessarily imply either the property or the right of apparenacy, to the estates from which they are taken, but are only popular descriptions, by which persons are sufficiently distinguished.

THE LORDS repelled the claim.

*Fol. Dic. v. 3. p. 206. D. Falconer, v. 2. No 112. p. 129.*

No 7.

Donald Cameron was designed in the act of attainder *younger* of Lochiel, his father being alive, although, as the estate belonged to himself, he ought not to have been designed *younger*. The Court found he was properly described.