No. 7. 1749, July 18. CLAIM, THOMAS DRUMMOND of Logie.

THE Lords pretty unanimously found that James Drummond, commonly called Duke of Perth, having died 11th May 1746, long before the time allowed for his surrendering himself, he was not attainted by the act of Parliament nor his estate thereby forfeited to the Crown, and therefore leave it to the claimant to follow out his right to that estate in the ordinary course of law. Easdale was against the judgment, Kilkerran was *non liquet*, and Leven thought the Court not competent to judge of the question. All the rest voted for it. The President for some time doubted of our jurisdiction, but his doubts were removed. He spoke first, and was clear both on the question of the jurisdiction and also on the principal question. The reasons of my opinion were chiefly two: I thought the condition, if he do not surrender, &c. was clearly suspensive and not resolutive, for that such as did surrender it could not be said that they ever were for one moment attainted of high treason, whereas had it been only resolutive, then notwithstanding the surrender they truly stood attainted from 18th April till the date of their surrender; and if it was suspensive, then James Drummond was a free liege at the time of his death, and his estate devolved to his heirs or disponees, and the act could no more be constructed to attaint him after his death no more than if he had been dead before the act or before 18th April, or before that Session of Parliament; and though I did not dispute the Parliament's power to attaint traitors after their death, as they did in the case of Cromwell and others, yet it is not done as an attainder *per verba de presenti*, but that they shall be adjudged and taken to be attainted of high treason as if they had been attainted during their lives, and the difference in the enacting words as to persons dead and persons alive but fled, in the act 30th Anne 12th Cap. 2d, is remarkable; and therefore I cannot think, that if any of this last class had afterwards been proved to be then dead, that they would have been thereby attainted; and as this act attainted a person supposed to be in being, and there was no such person in being as James Drummond on the 12th July 1746, till which time this attainder was suspended, therefore he was not thereby attainted. 2dly, That the Courts of law must judge of the meaning as well as the words of all acts of Parliament, and this as well as others, and must judge of them according to the known rules of law, and as it is a known rule of law that when potestative conditions are rendered absolutely impossible by the act of God without any act or fault of the person, such conditions *habentur pro impletis*, therefore the surrender being rendered impossible by James Drummond's death, we must hold it as performed.

No. 8. 1749, June 20, July 25. LORD BOYD'S CASE.

THE Earl of Kilmarnock in 1732 vested the fee of his estate in his son Lord Boyd, under certain reserved powers to be exerced with consent of some friends, whereon Lord Boyd was that year duly infeft, and has lately sold the estate to the Earl of Glencairn. The Exchequer having since surveyed that estate, Lord Boyd, by the name of James Boyd of Kilmarnock and Callender, entered a claim to the estate, and the answer was on the Clan Act, (which in the question anent superiors and vassals, we found was not expired, but subsisted till the act 21st of the King's repealing that part of the clause,) that all dispositions and conveyances by persons who should be attainted of the treasons

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