February 1750, after four days hearing, and getting the unanimous opinion of the Judges, upon the same grounds that I argued.

No. 11. 1749, Dec. 1. DUNCAN M'PHERSON'S CLAIM of CLUNIE.

EVAN M'PHERSON of Clunie being attainted of treason while Lachlan his father was alive, who died only June 1748; after his death Evan disponed the estate of Clunie to Duncan his infant son, and for him the estate was claimed, for that Clunie did not belong to his father Evan, while Lachlan his father was alive, so that he was not M'Pherson of Clunie, and therefore was not the person, though that was the designation always given him and taken by himself,—and as he had been some years married to Lord Lovat's daughter, there was little doubt that the estate was conveyed to him also; however, it might be difficult for the Lord Advocate to recover the marriage-settlement. But the Lords this day, (as I am told, for I was in the Outer-House) rejected the claim, *sed renit.* Dun *et* Easdale.

No. 12. 1749, Dec. 1, 15. LOCHIEL'S CASE.

FIND John Cameron attainted. *Pro* Milton, Strichen, Justice-Clerk, Monzie, Murkle, Shewalton, *et me.* *Con* was Easdale. *Non liquet* were Drummore and Dun. The President gave no opinion,—but during the debate all the Bar seemed clear for the interlocutor.

No. 13. 1750. Feb. 15. DEMPSTER *against* LADY KINLOCH.

GEORGE DEMPSTER in November 1742 got an heritable bond from the deceased Sir James Kinloch, father to the forfeiting person, and James Kinloch afterwards Sir James his son, now forfeited, for L.20,000, and was immediately infeft. This money was intended for payment of the debts, but as they had immediate use only for L.8735 of the money, Dempster gave them an obligation for the remainder of the money and interest thereof on demand, and in December 1743 retired his obligation with a short discharge by both father and son acknowledging payment, which was said to be holograph of the father except the date of the son's subscription, which being signed at a different place was said to be holograph. The son's Lady was about the same time infeft in her jointure, but Dempster's sasine was first registrated. Lord Advocate objected to the debt that it was suspicious, the whole money not being advanced at the date, and looked like a fund of money to the Rebels to carry on the Rebellion, and therefore insisted that it fell under the clause in the vesting act as granted after 24th June 1742, and the Lady objected to his preference on the priority of his registration that he could only be preferred for the sum then advanced but not for what was advanced after her sasine was registrated. As to the first, had the bond been only by the forfeiting person there might have been difficulty, but as Sir James the father who was not forfeited was proprietor of the estate, his bond could not be the worse for being also granted by his son, and therefore we made little difficulty of sustaining the claim,—but as to the preference the Court was greatly divided. The President was clear that he could only be preferred for the sum then advanced, and that it was no debt till the money was advanced. Others again (*inter quos ego*) thought that Dempster was a real creditor on the estate from the date of his infeftment for the

whole, and the Kinlochs creditors to him in the personal obligement, and there were numberless transactions of that sort every day both by real securities and sales, that is, the creditor or purchaser infeft and part of the money paid, and for the remainder either bills granted or an obligation to pay to a list of creditors, or to pay to the debtor or seller upon demand, or on drawing precepts. The President admitted, if bills were granted it would be good, or in the case of sales obligations might be taken,—and we insisted, that if lands might be so sold then so might an annualrent or wadset proper or improper, and we saw no difference betwixt giving bills and other personal obligements payable on demand. On the vote it carried by the narrowest majority to prefer Dempster for the whole. *Pro* were Minto, Strichen, Dun, Shewalton, *et ego*. *Con.* were Haining, Justice-Clerk, Murkle, and Drummore, who was reporter, and the President, but he had no vote. —13th June The Lords altered, and found my Lady preferable as to all except the L.8000 advanced. *Renit.* Dun, *et me.*

No. 14. 1750, Nov. 20. FRASER'S CLAIM on the ESTATE of LOVAT.

LORD LOVAT in beginning of 1741 executed a strict entail of his estate to his eldest son Simon Fraser and heirs-male of his body, whom failing to Alexander and heirs-male of his body, and then to his third son, and then to his next heirs-male, &c. reserving to himself the liferent of the far greatest part of the estate, and to manage and administrate the whole during his life, and with a power to set tacks and grant feus and wadsets and to contract debts, and even to direct the application of the rents after his death for payment of his debts,—and 16th January 1741 the tailzie was recorded in the Register of Tailzies, and in April thereafter in the Books of Session. In 1746 Simon the eldest son was attainted by act of Parliament, and in 1747 Lord Lovat was attainted by judgment of the House of Lords and executed. Pursuant to the late vesting act, the Court of Exchequer caused survey the estate as forfeited by Lord Lovat; and the two younger brothers claimed it upon the entail for themselves and their heirs. After a long hearing at the Bar and full Informations, the case was this day decided. There were some objections they made to the claim which were generally thought immaterial in this question, whatever they might be if the estate should afterwards be surveyed as forfeited by Simon the eldest son, such as that there was reason to believe that in Lord Lovat's marriage settlement there were clauses providing the estate to the heirs-male of the marriage, and therefore he could not limit him; 2dly, That by the act 1685 only such tailzies were allowed where the limitations were engrossed in charters and sasines, &c. and consequently where the right was completed which this tailzie was not. Lord Advocate also insisted, that it was void or fraudulent in prejudice of and to defraud the forfeiture on 13th Eliz. Cap. 5. and on the common law, for that Lovat had been contriving his treason as early as 1740, as appears by the evidence on this trial,—and quoted Hale's pleas of the Crown and other authorities. But the claimants produced other two strict entails in 1739 and 1740, to show that he always intended such entail, and as the Lord Advocate had no instant evidence of his allegations, he waved at present the objection. But the chief point was, whether the tailzie not being completed so that the feudal right remained with Lovat, and as he had so ample powers over the estate to feu wadset and contract debts,—he was not to be considered as fiar,—that it was *usus fructus causalis*,—that the son was only