

1750.

SAWYERS  
v.  
EARL OF  
MARCH.

“ness for the respondent, in this cause, notwithstanding the strict time limited for reclaiming against the interlocutor, is expired.”

For Appellant, *Alex. Lockhart, A Forrester.*  
For Respondent, *W. Murray, A. Hume Campbell.*

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THE LORD ADVOCATE, - - - *Appellant;*  
ALEXANDER, LORD FORBES OF PIT- } *Respondent.*  
SLIGO, - - - - - }

1 February 1751.

FALSA DEMONSTRATIO.—FORFEITURE.—Alexander, Lord Forbes of Pitsligo, found by the Court of Session to be not attainted by the attainder of “Alexander, Lord Pitsligo.” Judgment Reversed.

[*Elchies, voce Forfeiture, No. 9 and 10.*]

No. 92. ALEXANDER FORBES of Pitsligo, was by letters under the Great Seal, in 1663, created a baron of Scotland, by the title of Lord Forbes of Pitsligo. In 1690, the peerage devolved upon his great-grandson, the respondent. The estate, in the meantime, had been carried off by debts, but was repurchased by the respondent, who obtained from the crown a new charter in his own favour, by the name of Lord Forbes of Pitsligo, upon which he was infest.

By an act of the 19th of Geo. II. entitled “an act to attain Alexander Earl of Kellie, Alexander Lord Pitsligo, and others, of high treason,” it was

enacted, that the said Earl of Kellie, “ Alexander  
 “ Lord Pitsligo,” &c. should stand and be attainted  
 of high treason, unless they should render them-  
 selves up before the 12th January 1746, &c. and  
 by another act, 20 Geo. II. it was enacted, “ that  
 “ all estates of such persons as had been attainted  
 “ of high treason, between June 1745 and June  
 “ 1748, &c. should be forfeited to his majesty.”

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The respondent not having complied with the above conditions, was held as attainted of high treason, and his estate of Pitsligo was in consequence surveyed, and seized by order of the Court of Exchequer.

Thereafter the respondent, on the ground that the act did not apply to him, presented a claim to the Court of Session, setting forth, that none of the persons attainted for high treason, since June 1745 and before June 1748, were interested in the estates which had been so seized; and that he was alone entitled thereto.

The claim was founded upon the letters patent and the title of the peerage. It was maintained that the proper name of the respondent was Alexander Lord Forbes of Pitsligo. Whereas in the act attainting the parties above mentioned, the party there designed was Alexander Lord Pitsligo.

In the answers, the patent of creation (as stated in the claim) was admitted, but it was insisted that the respondent was the person meant, and sufficiently described by the act in question; notwithstanding every word of the description in the patent had not been transcribed into it, and that Pitsligo was his true and proper title, by which he and all his ancestors had been named and described ever since the creation of the title. In support

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of this, a variety of instances were referred to in acts of Parliament, rolls and minutes of Parliament, private deeds and instruments, sists, proceedings, and judgments in courts of justice, &c. in all which the family had been known and distinguished by the title of Pitsligo.

The Court found, (10 November 1749) that by 'the act of the 19th Geo. II. &c. the said Alexander Lord Forbes of Pitsligo is not attainted, and therefore sustained his claim.'

Entered 28  
 Nov. 1749.

The appeal was brought from this interlocuter.

*Pleaded for the Appellant*:—Pitsligo is the strict and proper title created by this patent: it is the name of a place erected long before into a barony, from whence the title was taken, and has always been so understood by the legislature, by the respondent himself, his ancestors, and all that have had any transactions with them. The respondent has constantly been known by the title of Pitsligo, and with a certainty that leaves no possibility of doubt that he was meant by that description.

The objections that have been made, all arise from the supposed legal effects of misnomers, either in conveyances, judicial proceedings, or acts of Parliament; in all of which it is said such misnomers have been fatal.

In the *first* place, there has here been no misnomer, whether it be considered according to the terms of the patent, or the titles by which the respondent has commonly been known.

But, in the *second* place, to consider each objection separately: as to conveyances, the general tenor of the cases prove the contrary, and show that it is immaterial by what name either the

granter or grantees are described, provided they are clearly and distinctly pointed out.

As to proceedings in courts of law, it is well known that a defendant in a suit at law may be called by that name which usage has given, though not the name of baptism or of his parents; and this rule extends even to criminal prosecutions. But whatever may be the ordinary rules in judicial proceedings, the construction of an act of attainder depends on no forms. The sole question is, what is the meaning of the legislature? If the meaning is plain, the judges are bound to declare that meaning to be the law; whenever a case within it comes regularly before them, whether that meaning be expressed in technical terms or not, and therefore it is, that the most penal laws have been construed even beyond the words to give effect to the obvious intention.

The cases of attainder referred to are essentially different from the present, as containing descriptions, not only contrary to and inconsistent with the real names, but unsupported by any colour of usage.

*Pleaded for the Respondent* :—In all judicial proceedings, the true name of the party must be set forth, and the omission of it cannot be supplied by any evidence to prove the identity of the person.

The true names of peers created by patent, are such only as the crown confers by the patent, and the omission of any constituent part of such name is as fatal as the omission of the whole, the remainder not being the true name. The title conferred by patent, is Lord Forbes of Pitsligo. The act attaints Alexander Lord Pitsligo; titles materially different. The records differing so essentially, no

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collateral evidence can be called in to prove that the person ennobled, and the person named in the act of attainder are one and the same. The family was neither ennobled by the name of Pitsligo, nor by the name of Forbes. Their peerage does not rest alone or principally upon either of the names, but upon both together, as appears by the letters patent, which are conclusive upon this point.

Although the intention of the legislature is the proper rule to discover what is the subject matter to which an act of Parliament relates, yet, whenever that appears, the ordinary rules of law must take place, and govern the particular application of the acts. This, therefore, being an act to attain certain persons by name, must be governed by the rules of law observed in similar judicial proceedings; and, accordingly, it was determined by the House of Lords, upon the opinion of all the judges, that an act attainting Major-General Thomas Gordon, laird of Auchintool, did not attain Major-General Alexander Gordon, laird of Auchintool, although no doubt could be entertained of the person intended by the legislature.\*

Judgment,  
Feb. 1, 1751.

After hearing counsel, the judges of England were ordered to give their opinion upon the following matter, viz. “The great grandfather of the  
“respondent being by letters patent, under the  
“Great Seal of Scotland, in 1663, created a peer of  
“Scotland, by the title of Lord Forbes of Pitsligo;  
“and the respondent, and his ancestors, claiming  
“under the said letters patent, having commonly  
“used and subscribed themselves to deeds and  
“other instruments, by sometimes the name or style  
“of Forbes of Pitsligo, and sometimes Pitsligo;

\* 25 Feb. 1720.—Robertson's Appeals, No. 60.

“ and having been commonly described in legal  
 “ proceedings, and otherwise, as well by the name  
 “ or style of Lord Pitsligo, as of Lord Forbes of  
 “ Pitsligo, and the said respondent, and his ances-  
 “ tors, having been always entered in the rolls of  
 “ Parliament of Scotland, before the union, and  
 “ called and described in acts of the Parliament of  
 “ Scotland, (except in one private act of ratifica-  
 “ cation in 1681,) by the name or style of Lord  
 “ Pitsligo; and it not being proved or alleged in  
 “ this cause, that any other person besides the re-  
 “ spondent, was at or before the passing of the act of  
 “ Parliament aftermentioned, called or known by the  
 “ title of Lord Pitsligo; and the respondent not hav-  
 “ ing surrendered himself to justice, on or before  
 “ the day specified in the act of the 19th of his ma-  
 “ jesty’s reign, for attainting Alexander Earl of  
 “ Kellie, and others therein named, of high trea-  
 “ son; whether the respondent is by virtue of the  
 “ said act attainted of high treason, by the name or  
 “ title of Alexander, Lord Pitsligo? Whereupon,  
 “ the Lord Chief Justice of the Court of King’s  
 “ Bench having conferred with the other judges  
 “ present, acquainted the House that they were  
 “ unanimously of opinion, that the respondent is  
 “ fully and effectually attainted by virtue of the  
 “ act, by the title of Alexander, Lord Pitsligo.”

“ It is ordered and adjudged, &c. that the inter-  
 “ locutor complained of be, and is hereby reversed,  
 “ and it is further ordered, that the claim given  
 “ before the Court of Session, on behalf of the re-  
 “ spondent be, and the same is hereby dismissed.

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For Respondent, *A. Hume Campbell, Al. Forrester.*