

much, that the adjudication was not even sustained as an interruption of the negative prescription, although it evidently enough appeared to have been only an escape in the writer who drew the bill of adjudication.

*Fol. Dic. v. 3. p. 204. Kilkerran, (GROUNDS and WARRANTS.) No 1. p. 227.*

No 3.

1743. July 5.

HAMILTON and BAIRD *against* HUNTER.

WHERE the bond of cautionry in a suspension referred to the bond charged on, as granted for the sum of 8000 merks in the year 1738, whereas the bond produced for the charger bore date in 1728, upon which ground the cautioner, at discussing, pleaded to be free, in respect no such bond was produced as that referred to in his bond of cautionry; the LORDS, after examining the doers for the parties, and the instrumentary witnesses to the bond of cautionry, found, 'That the bond of cautionry had only, through mistake, misrecited the bond charged on, and that the said misrecital in the bond of cautionry was not sufficient to liberate the cautioner.'

*Fol. Dic. v. 1. p. 205. Kilkerran, (FALSA DEMONSTRATIO.) No 1. p. 188.*

No 4.

A mistake in the bond of cautionry in a suspension, with regard to the date of the bond suspended, is not sufficient to liberate the cautioner.

1749. November 16.

JOHN DICKIE, Factor for the LORD FORBES of Pitsligo, *against* The KING'S ADVOCATE.

A CLAIM was presented in behalf of Alexander Lord Forbes of Pitsligo, for his estate, which had been surveyed by order of the Barons of Exchequer, as forfeited, for that he was not attainted.

*Answered,* He was attainted by act of Parliament, by the name of Alexander Lord Pitsligo, which was good.

*Replied,* The attainder cannot affect him, not mentioning him by his true title of Lord Forbes of Pitsligo.

*Pleaded* for the Claimant; The common law of England, by which this cause is to be tried, always required, that, in judicial proceedings, the party should be described by his true name: Further than which it was statute, 1st Hen. V. c. 5. that in every original writ of actions personal, appeals and indictments, and in which the exigent should be awarded, to the names of the defendant's additions should be made, which if it were not done, the outlawry to be pronounced on such writs, should be void. The claimant has no occasion to plead, that this statute extends to Parliamentary proceedings; as the defect here is not in an addition, but in his name; part of which the title of dignity of a peer, or person of inferior dignity makes, Coke, vol. 2. fol. 665. and 666. and vol. 4. fol. 363. And this name was so necessary, that if pending any action, the

No 5.

Alexander Lord Forbes of Pitsligo was attainted by the name of Alexander Lord Pitsligo. He claimed his estate as not forfeited, he not having been designed by his true name and title. The Court of Session sustained his claim; but the House of Lords reversed the judgment, as it was proved that he was commonly known by the title of Lord Pitsligo.