

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 disposed 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