

No 1.

be umquhil the Earl of Murray Regent, and the same not being filled in his lifetime, could not be now filled, *quia mortuo mandatore expirat mandatum*. To this was *answered*, That the contract was made with the advice, consent, and assistance of the said Earl, *prout verba in contractu sonabant*; and the defender offered him to prove, that the said Earl, before his decease, gave command to Mr John Wood, his secretar, to fill up the same blank, with the soume of 300 merks. To this was *answered*, That the allegiance was not relevant, except they wald allege that the said Earl had power to do the same, whilk was not contained and expressed in the blank.—THE LORDS admitted the Earl's command to be proven *per scripturam*. *Ego tamen fui singularis in opinione mea*, that the said blank could not be filled up after the decease of the said Earl, *nullo modo, quia electa fuit industria personæ in predicto Comitæ; et mortuo mandatore expirabat mandatum; et mandati sunt observandi diligenter in forma specifica, de qua vide L. C. mandati et ibidem Cartol. et vide etiam glossam in cap. ad agendum in sexto ibidem*.

*Fol. Dic. v. 1. p. 209. Colvil, MS. p. 298.*

No 2.

1628. February 2.

DUFFUS against FORRESTER.

THE executor of the umquhil Laird of Duffus pursued John Forrester for exhibition of a bond of 500 merks made by the defender to Duffus. And being exhibit to hear and see the same registrate; *alleged*, He cannot exhibit the bond, because umquhil Duffus by his letter, directed to the defender, desired the said defender to pay to David Sutherland, carrier of the letter, the said sum, and receive his bond from him; conform whereunto he paid the sum to David, and retired his own bond and cancelled it. *Replied*, Not relevant, unless it were alleged that he paid conform to the letter before Duffus's decease. Which reply the LORDS sustained, *quia mortuo mandatore expiravit mandatum*.

*Fol. Dic. v. 1. p. 209. Spottiswood, (EXHIBITION) p. 123.*

No 3.

The rule, that *mortuo mandante cessat mandatum*, was found not to take place in a procuratory *in rem suam*, where the procurator, who, by virtue of his procuratory,

1629. June 30.

SHAW against L. DUNIPACE.

A PROCURATORY made by the consituent, to his procurator, to pursue for some debts owing to the constituent, was sustained as a good title to pursue the debtors thereupon, for payment to the procurator, and the action was sustained at the procurator's instance, after the decease of the constituent; and the allegiance proponed against the action and procuratory, *viz. quod mortuo mandatore expirat mandatum*, was repelled; in respect, by the procuratory, the constituent made him procurator *in rem suam*, because of payment made to him by the pro-