

1665. *February 22.* FORBES of Asloun *against* The LAIRD of PHILORTH.

IN a case betwixt Forbes of Asloun and Philorth, found that a horning on a registrate bond against Asloun, who was charged on six days to pay, though dwelling beyond the water of Die, sufficient; notwithstanding of the act of Parliament: which they found only to extend to charges on letters before the Secret Council: and that in bonds for borrowed money the debtor had in effect renounced that benefit of the law by consenting to be charged on fewer days; and that *dies interpellat pro homine*.

*Act.* Advocatus. *Alt.* Mackenzie. In P. D.

*Advocates' MS. folio 53.*

1665. *Feb. 22.* PALLET and FAIRHOLME. In P. D.

IN a case betwixt Monsieur Pallet and Thomas Fairholme, who had drawn a bill on Pallet to ship a loading of wines on Ninian Williamsons's credit; The Lords found Fairholme as well obliged to pay the price of the wines as Williamsons, upon whose credit they were advanced, and under whose covert the bill drawn by Fairholme was sent to Pallet. The case I have elsewhere.

*Act.* Wedderburn.

*Alt.* Cunyghame.

*Advocates' MS. folio 53.*

THE matter of the cruives on the water of Don, betwixt the town of Aberdeen and the heritors, see it elsewhere.

*Act.* Advocatus.

*Alt.* Lockhart.

In P. D.

*Advocates' MS. folio 53.*

1665. *February 22.* SIR GEORGE KINNAIRD *against* REIDS.

SIR GEORGE KINNAIRD, as donatar to the master of Gray's recognition, pursues a declarator of the hail barony of Foulls, to the which Mr. Andro, Pat. and Robert Reids, were called, who were vassals to the Lord Gray, by service of ward and relief for the lands of the Knap, and which were disposed by the Lord Gray's predecessors to the Lairds of Moncur, 300 years ago. Amongst other debates in that case, whereof I have the note, it fell to be questioned, if the lands of Knap, sold as said is, could recognise upon deeds done by this Master of Gray, *post tantum temporis intervallum*; or if the deeds of his predecessors, could be drawn back and conjoined with the deeds done by this Master of Gray, so as to make up the cause of recognition.

It was found that the Knap, being a part of the barony of Fouls, feued out 300 years since, without the superior's consent, did recognise to the superior and his donatar, by the deeds done by this last vassal; for the deeds of all the

vassals being joined made up the alienation of the greatest part of the feu without the superior's consent, and so recognosces; *item*, found that confirmations of base infeftments, though in the usurper's time, saved from recognition.

*Act.* Nisbet, Wedderburne. *Alt.* Wallace, Dinmuire. I. P. D.  
*Advocates' MS. folio 53.*

1665. *February 22.* WILLIAM YEAMAN *against* PATRICK OLIPHANT.

The Lords found in a declarator of the expiration of a comprising by intromission, &c. where a compriser has two titles in his person, and has entered in possession of the lands by virtue of the comprising then standing in his person, that he cannot ascribe his possession to any supervenient right or title he should thereafter acquire, posterior to his comprising and possession thereon.

In this same cause also, betwixt Wm. Yeaman and Mr. Patrick Oliphant, found that though parricide was a special kind of murder under trust; yet that the act of Parliament defined another punishment therefore nor treason, which was the forfeiture of the heirs of the parricide *in recta linea*, and giving the estate to the nearest collateral.

It was also found that the punishment of contumacy for a crime, wherein if the defender had compeared, he would have been forfeited, could infer no other punishment but allenary the confiscation of the pannel's moveables, being only charged with horning to appear to find caution to underly the law. The large Information of this I have.

*Act.* Lockart, M'Keinzie, and Dinmuire. *Alt.* Cunyghame and Maxwell.  
*Advocates' MS. folio 53.*

1665. *February 22.* SHAW'S *against* MR. SHAW'S EXECUTRIX.

MR. SHAW, a Scotsman, upon death-bed, being intimate with one Mrs. Lewis, at London, where he died; and she being a chaste young woman, takes advantage of his condition, and asked him if he would leave her executrix; and he, being in that estate that he would have answered *affirmative* to any thing she had propounded to him, said he was content; and this being spoken before witnesses, she proves the same before the prerogative court of Canterburie, which has the force of a testament by the English law, being that the civil law calls a nuncupative testament. She claiming right to his moveables in Scotland, by virtue of this testament, the nearest of kin, they compear and take a dative; and then debating anent the preference, the Lords found that her nuncupative testament was not a valid title in Scotland to claim his moveables here, as the executor dative could not prejudice her with the nuncupative testament as to the moveables in England; and so preferred the nearest of kin to the Scots estate, he being a Scotsman, and Mrs. Lewis to the English moveables.

*Act.* Mackeinzie. *Alt.* Cunyghame. In P. D.  
*Advocates' MS. folio 54.*