

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-

curator of the said sums, for which he had the procuratory, whereby to pursue, and so it was not revocable, even though he had been living.

Clerk, *Gibson*.

Fol. Dic. v. I. p. 209. Durie, p. 452.

No 3.
was pursuing debts, had already paid the sum to the constituent.

SECT. II.

Procuratories and Precepts.

1611: February 6. GILBERT ROBERTSON *against* The BAILIE of BURNTISLAND.

GILBERT ROBERTSON having obtained a procuratory of resignation of a tenement of land, in Burntisland, from a woman who was heritable proprietor thereof, and having required the Bailie of the town to receive the resignation, and give him infestment conform thereto; and taking instrument upon the Bailie's refusal, the woman who made the resignation thereafter deceasing, Gilbert pursued the Bailie, and the woman's heir, for his interest, to hear the Bailie decerned to give him sasine upon the foresaid resignation, and to hear the same found as lawful as if the sasine had been given in the resigner's lifetime, which reason the LORDS found relevant, and decerned conform thereto.

Fol. Dic. v. I. p. 209. Haddington, MS. No 2144.

No 4.
A sasine was decerned to be given by the superior upon a procuratory of resignation after the resigner's death, upon instrument taken against the superior for refusing before the resigner died.

1707: March 28. LADY MARY BRUCE *against* The EARL of KINCARDINE.

THE said Lady Mary, eldest sister to the last Earl of Kincardine, and William Gochran of Ochiltree, her husband, pursue Sir Alexander Bruce of Broomhall, now Earl of Kincardine, on this ground, that the last Earl subscribed two procuratories of resignation in favour of the said Lady Mary, for resigning the title, dignity and honour in the Queen's hands in her favours; and therefore, the said Sir Alexander, as heir-male, had no right to assume the title of Earl of Kincardine, his predecessor being denuded; and therefore, should be prohibited and discharged from using the same; and that Lady Mary had right to obtain from the Queen a patent on her brother's procuratories, notwithstanding the same were never resigned before his death, if the Queen please to confer the same. *Alleged* for the Earl, That titles of honour not being *in commercio*, they

No 5.
A procuratory of resignation of a title of honour, found not to fall under the act 1693, so as to become void by the death of the granter.