

of Balwill, as a part of the earldom of Argyle, did pursue a removing against George Stirline,—who ALLEGED, That he could not be decerned to remove; because he stood infeft in these said lands by a charter under the great seal, before the Earl's gift of forefaulture and infeftment.

That defence was REPELLED, Because the defender having no gift of these lands, upon the forefaulture, and his charter being only granted by the Exchequer, of course, upon a comprising :

The Lords found, That the King was not *habili modo* denuded of the right of property fallen by the forefaulture; which could only be done by a charter and infeftment upon the forefaulture: and that, notwithstanding it was alleged, that the property belonging to the King, by the forefaulture of the Earl of Argyle, who was superior of these lands; which were comprised from the Earl's vassals, who were never confirmed by the King; the charter under the great seal, granted, before the King was denuded, in favours of the pursuer, was equivalent to a confirmation of the vassal's right.

Page 20.

1668. December 13. MURRAY of PHILIPHAUCH against CUNINGHAME and JOHN THOMAS.

MURRAY of Philiphauch having impignorated a silver plate to one Cuninghame, for the sum of £300, by a bond, bearing the particular *species*, with an obligation, that, in case of not-payment at the term, he should have power and liberty to sell the same; he being countable for the superplus, which was more than the sum for which they were impignorated: The said Cuninghame did borrow a greater sum upon the said plate, and did impignorate the same to one John Thomas, merchant in Edinburgh; who being pursued to deliver the plate, upon payment of the first sum borrowed from Cuninghame: It was ALLEGED, That Cuninghame having power to sell, as said is, the defender was not bound to restore the plate, till he was satisfied of the whole sum for which they were impignorated to him.

This allegiance was REPELLED, Unless that it were offered to be proven, that Cuninghame had required his money from the debtor, or charged him for payment, before he did of new impignorate the same to another: For the Lords found, That the said clauses, bearing a liberty to sell and impignorate, could not take effect till the debtor was required, or it was intimated to him, that, in case of not-payment, the goods impignorated should be liquidated and disposed of.

Page 21.

1668. December 16. DOCTOR FORBES against ANNA BLAIR.

DOCTOR Forbes having married ———— Edgar, who was provided, by her father, to a portion of 4000 merks; and thereupon having apprised from his wife's brother the lands of Keithick; and pursuing for mails and duties, com-