1680. *June* 23. RUTHVEN *against* WEIR.

No 46.
An allegeance of *pactum de quota litis* being proponed by the debtor against an advocate assignee, the Lords inclined to sustain the nullity, though proponed by the debtor, and not by the cedent, with whom the paction was made, and they ordained the assignee to depone in presence of the cedent.

MR WILLIAM WEIR having charged Edward Ruthven for payment of a sum due by his grandfather, General Ruthven, to Patrick Ker, and assigned by him to Mr William; he suspends on this reason, that Mr William is an advocate, and a member of the College of Justice, and so neither process nor charge should be sustained at his instance upon a bought plea, contrary to the prohibitions of the act of Parliament thereanent. It was *answered*, That Mr William his assignation is after his cedent had obtained decreet when there was no *lis dependens*, which the LORDS sustained. The suspender further *alleged*, That the charger's right was purchased *ex pacto de quota litis*, Mr William being advocate for his cedent, and having agreed with him for such a share of what should be decerned, and therefore neither process nor charge should be sustained at his instance upon this title, which is reprobated by the civil law, and by the custom of all civil nations. It was *answered*, That the act of Parliament prohibiting buying of pleas, being our special remeid by statute, is in place of the custom of other nations *de quota litis*. 2*do*, The law doth only reprobate such pactions as to make them void as to the client who made the paction, that he is not obliged so stand to such a paction; but here the client questions not, and it is *jus tertii* to the debtor, who must either pay to the cedent, or the assignee; and if the assignee be excluded, he will be liable to the cedent, and so hath no benefit. It was *replied*, That our statute is not exclusive of questioning rights *ex quota litis*, and that such pactions being null, to discourage advocates from entering thereinto, it is competent to all parties to propone a nullity; and as the debtor might allege that the assignation was null, or false, to exclude the assignee, it could not be repelled as *jus tertii*, because he would remain debtor to the cedent; so in this case, the nullity of *pactum de quota litis* is competent to the debtor; and, therefore, he desired that the cedent's oath might be taken, whether or not there was such a paction.

THE LORDS inclined to sustain the nullity, that this assignation was procured *ex pacto de quota litis*, and found it only probable by writ or oath of the assignee, and ordained him to depone in presence of his cedent, reserving to themselves what it should operate after probation.

Fol. Dic. v. 2. *p.* 23. *Stair, v.* 2. *p.* 774.

*** Fountainhall reports this case:

MR WILLIAM WEIR, advocate, against the Earl of Callander, and Edward Ruthven: The LORDS having heard the Lord Newton's report, "They find the act of Secret Council produced does not prove the allegeance founded on the act of Parliament, allowing eight years annualrent to be given down to forfeited persons; and that no other act but the act of Parliament itself can satisfy

No 46.

and prove it; and allow the defenders yet to produce the same betwixt and Tuesday next; and find the assignation taken from Ker by Mr William Weir is after the date of the decreet, and so is not a transgression of the act of Parliament against buying of pleas by advocates. And as to *pactum de quota litis*, (which differs from the buying of a plea) before answer, ordain Mr William Weir to be examined, in presence of the persons to be condescended upon by the defender, concerning the way and manner of acquiring that right, and what he gave for it. And ordain all other persons to be condescended upon by the defender to be examined upon oath concerning the having of any writs for verifying the allegeance *scripto*. And grant diligence to the defender for that effect; reserving to themselves to consider what the probation may operate."—*See* APPENDIX.

Fountainhall, v. 1. *p.* 104.

1683. *December* 20.

Sir WILLIAM PURVES, His Majesty's Solicitor, *against* Mr JAMES KEITH, and The EARL of MARISHALL.

No 47.
The right acquired by a member of the College of Justice, who buys a plea, is not null; but he incurs the penalties of the act of Parliament.

THE case was; Sir William Purves long ago, disponed a comprising of Lord Gray and Lord Marishall's estates to James Allan writer to the signet, who, in the warrandice, takes him obliged not only to warrant the formality and legality of the executions of the denunciation of the apprising, but also the reality, verity and truth thereof; thereafter Mr James Keith, also a writer, having acquired the right of this comprising from James Allan, not for his own behoof, as was thought, but for the Earl of Marishall's use, he designedly, as is affirmed, to come back upon Sir William Purves for his special warrandice foresaid, causes another appriser of Marishall and Gray's estates raise a reduction and improbation of Sir William Purves's apprising against Keith himself, as now having right thereto. And though in law after 24 years from the date of an apprising, one is not bound to produce the executions of his comprising, seeing the messenger who denounces the lands, is oft times also judge to the decreet of apprising, and that they are loose papers easily exposed to perishing; yet if they be produced, they may be improved false; and so Mr James Keith tamely produces the executions and all; and the two witnesses therein being examined, they depone, they do not remember that they were adhibited witnesses to that execution or knew that messenger, or were ever upon the ground of these lands; whereon the LORDS improved the execution and found it false, (which is hard,) and so the apprising falling *in toto*, Mr James Keith recurs back upon Sir William Purves on the special conception of his warrandice, which he had inadvertently given too large. On this Sir William Purves raises a reduction of that decreet of improbation on these three grounds: 1*mo*, That Mr James Keith had lost his right, because by the 220th act 1594, members of the Session are discharged to buy pleas; *ita est*, there was a depending process on this when he took a