

No 18.

Advocates bound to depone as to secrets of their clients, relative to the expification of trusts, and private fraudulent conveyances.

1684. *January.* Mr JAMES KEITH *against* Sir WILLIAM PURVES.

THE LORDS found, That though advocates are not bound to discover the secrets of their clients, concerning the point of right, they were yet obliged to depone in the expification of trusts, and private fraudulent conveyances; and therefore Sir George Lockhart, and some other advocates, were examined about their knowledge of a trust put in the person of Mr James Keith, by the Lord Marshal, in prejudice of Sir William Purvis; in the reduction and improbation of the execution of Sir William's apprising, at the instance of Mr James Keith, who had right to another apprising of the same subject. (*See* the particulars of the reduction here referred to, under *Quod ab initio virtuosum*, and under *Pactum illicitum*.)

Fel. Dic. v. 1. p. 26. Harcarfe, (ADVOCATE,) p. 4.

No 19.

An action to have an advocate deposed for lending his name in trust, in a matter under debate at law.

1684. *January.* TOLQUHON *against* THORES.

TOLQUHON having raised a summons against Sir David Thores, advocate, to hear and see, &c. that he ought to be deposed, conform to act 216, Parl. 14. Ja. VI. for having lent his name in trust for one Forbes, to a right under debate at law.—It was *alleged* for the defender, That he is not in the case of the act of Parliament; because the right was not only granted to him in trust upon back-bond, but also he declared, at the first calling of the process in his name, that it was a mere trust; and so the reason of the act ceased.

This debate was laid aside at the pursuer's desire, till the event of a count and reckoning. (*See* COMPETENT.)

Harcarfe, (ADVOCATE,) p. 4.

No 20.

An instance of the duty of an advocate to his client, continuing after the client's death, without any new authority.

1684. *January 16.* WILSON *against* FOULIS of Ratho.

THOMAS WILSON bailie in Leith, and Margaret Spence his spouse, against John Foulis now of Ratho, and Mr Thomas Learmont advocate, being reported by Saline; THE LORDS found, That Mr Thomas Learmont having been advocate for the deceased Ratho, against whom the decret was put up before his decease, the said decret being now quarrelled as unwarrantably extracted, that Mr Thomas has interest to propone objections against the said decret, in order to the rectification thereof, as procurator for the deceased Ratho, as if the same had been proponed before extracting; though this was to make him an advocate without a client, which are *correlata*; and to cause his mandate continue, *mortuo mandatore*, contrary to the principles of law; and to hinder apparent heirs to state themselves the *veri et legitimi contradictores* to their predecessors creditors. But the LORDS thought it a part of an advocate's faithfulness and duty to carry on the

process begun, (seeing *res no est integra, et mandatum in tali casu morte mandatoris non cessat*;) and that he has a rational interest to see that what his dead client was wronged in be rectified, lest the fault should afterwards be charged on him; and as the law, § 13. *instit. de obligat. quæ ex delicto* gives a *commodatarius* an interest *rem vindicare* and to prosecute actions, though he be not *rei dominus*; even so in an advocate.—But *queritur*, if he may propone new allegiances not founded on in the defunct's time, or quarrel an act of liti-contestation extracted long before his death; and if he do it, if he ought not *periculum alienæ litis suscipere et subire*, and be liable as if he were the principal client? This interlocutor was adhered to, upon the 13th March 1681.

Fol. Dic. v. 1. p. 25. Fountainball, v. 1. p. 260.

No 20.

1693. February 10. EARL OF MELVILL against EARL OF PERTH.

THE LORDS having called the action, pursued by the Earl of Melvill against the Earl of Perth, for restoring the composition he received for his forfeiture.—THE LORDS found Mr John Menzies, advocate for Perth, his servant's promise to enrol that cause, and not being done, by his master's discharging him, was equivalent *fictione juris* to an enrolling, seeing he was *in dolo* to conceal the not enrolment, and should have discovered it the Earl of Melvill's advocate, that they might not rely on his promise: But the 11th and 12th articles of the act of regulations 1672, being urged, that the Lords could not anticipate causes before they came in by the course of the roll, and discharging clerks to write on these processes; the Lords would not go over the act of Parliament, nor force the Earl of Perth to answer *hoc ordine*: But, in regard to fraudulent dealing, they fined Mr John Menzies, the advocate, in five pounds Sterling to the poor; and James Callander, his man, was debarred the Session-house, and committed to prison during the Lords pleasure.

1693. December 7. In the case Melvill against Perth, the LORDS repelled Perth's dilator, that Melvill, the pursuer, was out of the kingdom, and there was no factory from him, seeing he was here at the first intenting, and calling of the process; and a mandate was only requisite for strangers, or such as were absent *animo remanendi*.

Fol. Dic. v. 1. p. 25. Fountainball, v. 1. p. 558. 576.

1694. June 21. FACULTY OF ADVOCATES against The MACERS.

THE debate between the Faculty of Advocates and the Macers, viz. who of them had the right of keeping the lawyers bar, was heard. On Banantyne's death, the advocates elected James Dalrymple. The macers, by a bill, reclaim-

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No 21.

An advocate fined for the malversation of his clerk.

If the pursuer was in the kingdom when the process commenced, his advocate may continue his appearance without a special mandate, though he occasionally be out of the kingdom.

No 22.

The right to appoint a door-keeper in the Parliament House.