

In the major proposition of the indictment, it was set forth, that murder, especially the murdering of a person in his own shop, was a crime of a heinous nature, and severly punishable.

The minor proposition proceeded to allege, that the pannel, having conceived a previous ill-will at the deceased, did wickedly and feloniously attack him in his own shop, breaking several bottles full of some liquid substance over his head, till the blood gushed from him: That, having afterwards thrown him on the ground, and while he was unable to defend himself, the pannel had beat him with his hands, and trampled him under his feet, till he was at length rescued by some people coming into the shop; and that, notwithstanding every care having been taken of the deceased, he had languished five days, and then died of the hurts he had received from the pannel.

The defences urged for the pannel were, That he had always lived on the best terms of friendship with the deceased, to whom he was nearly allied by marriage: that the deceased having, at different times, thrown a quantity of assa fœtida on the pannel's clothes, the pannel had threatened to break all the bottles in his shop; and soon after, being much intoxicated, he had gone into the shop of the deceased, and had thrown several bottles at him and his apprentices, but without any intention to hurt, far less to deprive him of his life.

Some exceptions likewise were taken to the relevancy of the indictment, which however the Court sustained as relevant to infer the pains of law; but at the same time allowed the pannel a proof of all circumstances tending to exculpate him or to alleviate his guilt. And the jury returned a verdict, "That the pannel, George Story, was not guilty of the murder libelled, but that he was guilty of culpable homicide."

This verdict was approved of by the Court, who pronounced the following sentence:—

"In respect of this verdict, the Lords find the pannel liable in an assythment to John Stewart, private prosecutor, for himself, and in behalf of the other nearest of kin of the deceased William Stewart; and having considered the circumstances of the pannel, they modified the same to the sum of 1000 merks: Farther, they adjudge the pannel to be committed prisoner to the tolbooth of Paisley for the space of eight months, and thereafter till payment of the said assythment, and also until he find security, in the books of adjournal, to keep the peace for the space of two years, under the penalty of 2000 merks Scots."

*Fac. Col. Vol. 9, App. No. 6, p. 9.*

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1787. February 20. WILLIAM MACDOWALL *against* ANDREW BUCHANAN.

MR Andrew Buchanan was, at the meeting for election in 1786, enrolled as a freeholder in the county of Renfrew.

His freehold, which was obtained from Mr Spiers, stood precisely on the same footing with that of Mr George Buchanan, with this only difference, that he had not subscribed the deed of consent executed by the heirs of entail. But

he was not ignorant of the transaction, a copy of the deed having, before his enrolment, been read over to him.

A majority of the Lords were of opinion, that, as the freehold-qualification of Mr George Buchanan had been found to be nominal and fictitious, the one in favour of Mr Andrew Buchanan could not be viewed in a different light.

After advising a complaint in the name of Mr Macdowall, with answers for Mr Buchanan ;

The Lords found, " That the freeholders did wrong in admitting Andrew Buchanan to the roll of freeholders, and ordered his name to be expunged."

*Fac. Col. Vol. 9, No. 314, p. 488.*

1794. December 10. JANET OLIPHANT *against* MARGARET and ELEONORA OLIPHANTS.

THIS case is a sequel of that reported, *Fac. Coll.* 19th June 1793, *Oliphant against Oliphant.*

Janet Oliphant, in consequence of the reservation in her favour in the interlocutor, stated in that report, brought an action against her two sisters by the former marriage, and against her brother, the heir of entail, concluding, as a posthumous child, for her share of the bond of provision.

The Lord Ordinary " Found her entitled to one-third of the provision in question."

And, on advising a reclaiming petition and answers, the Court, proceeding on the grounds mentioned in the former report, with only one dissenting voice, " adhered."

*Fac. Col. Vol. XI, No. 143, p. 327.*