

then the Lords, at that same time, will modify what they truly find to be Pitreichy's damage through the delay.

Advocates' MS. No. 219, folio 104.

1676. *July*.—In the decret of declarator of nullity of the minute, passed betwixt my Lord Pitreichy and Gordon of Geicht, about the recognition of Geicht's lands gifted to Pitreichy, in regard of failyie in performance, and which was assigned to the Earl of Aboyne, (*Vide supra*, July, 1671, Nos. 166, 198, and 209, between the same parties,) the Lords reponed Geicht, notwithstanding the decret upon the commission of the failyie, and admitted him to the benefit of the said contract, he performing the heads and contents thereof. Which was *bene judicatum*.

Advocates' MS. No. 492, § 4, folio 257.

1676. *July*. SIR DAVID CARNEGIE of Pittarrow *against* _____

SIR DAVID CARNEGIE of Pittarrow having charged on a decret, and being ready, after the days of the charge elapsed, to poind; a stop from the Ordinary on the Bills, is presented, superseding execution till Saturday. Saturday comes; and Pittarrow sends to see if they either had procured a suspension or prorogation of the stop; none of which they having, he caused poind. Upon this he is pursued before for a pretended riot, since he should have suffered that whole day which was expressed in favours of the debtor, (and *in casu dubio favorabiliores rei quam actores, et respondendum potius pro reo*;) as the law says, *totus ille dies ex æquitate et humanitate est debitori relinquendus; par. 2, ibique Vinnius, Institut. de Verborum Obligationibus, par. penult. et ult. Institut. de Inutilibus Stipulationibus.*

Pittarrow ANSWERS,—That a stop till Saturday, in congruity of all language, can never include Saturday within the stop, but is exclusive thereof. *Dies termini ad quem non computatur in termino*, (*vide supra*, November, 1673, Somervell and Beg, No. 424;) that *esto* it were included, yet a probable cause of doubting *excusatur a spolio*, and the most it can infer is restitution.

REPLIED,—That *dies adjectus semper refertur in tempus finitum, non in tempus inchoatum*; l. 13, 41, 42, 56. *par. 5, 138. D. de Verborum Obligation.*; Vinnius, *ubi supra*: That the Latin words *donec et usquam ad*, are not so much *particulæ illativæ futuri*, as *affirmativæ vel negativæ præteriti*; as the learned *Fredericus Spanhemius* shews in his *Dubia Evangelica*, tomo 1^{mo}, *dubio 28, pag. 230*. in his explication of these words of the Evangelist Matthew, that “Joseph did not know Mary till she had born her first begotten son;” which words he elegantly proves, by twenty parallel instances drawn from other scriptures, against the Helvidians, that they do not denote, nor import that she continued not a virgin, and that Joseph knew her after; and that such words do not signify *finem sed continuationem actus*.

In this cause it was queried at Sir G. Lockhart, If Arbutnot's servants, who were apprisers of the goods, can be in any hazard as accessory to a spuilzie, though the poinding were illegal, because of a stop upon a deliverance of the Lords of Session only intimated to Pittarrow. He answered, That in law there could be no

imaginable hazard, they being but naked apprisers, and sufficiently warranted by the letters of poinding; and that it has been frequently so decided.

Advocates' MS. No. 499, folio 261.

FOR the further knowledge of what Decisions passed amongst the Lords, from July, 1673, till December, 1674, (at which time Sir George M'Keinzie's book of Observations upon the Act of Parliament 1621, against Bankrupts, was given in to be printed,) and for the rendering this collection of Practiques the more complete and perfect, I have excerpted summarily, and compendiously drawn furth into this place, all the Decisions of the Lords, observed by him in the said book, from July, 1673, till December, 1674, in regard our observes are but thin and few that space, being deprived a part of it; and which I have only marked with much brevity as to their dates, persons' names, and page where it is, because it may be read in the book itself.

IMPRIMIS, Marjorie Haliburton, relict of Hugh Watt, *contra* Morison, p. 24 and 96. *2do*, Lindsay *contra* Gray of Hayston, February, 1674, p. 35. *3tio*, Waugh in Selkirk, p. 41. *4to*, Street and Jackson, Englishmen, *contra* Mason, 2d July, 1673, p. 47. *5to*, December, 1673, Reid of Dandilling, p. 58. *6to*, Spencerfield *contra* Kilbrackmont; More and Laird of Gruibet; 5th July, 1673, Home *contra* Smith; *item*, Waughop *contra* Major Biggar, p. 66. *7mo*, Bannerman of Elsieck *contra* Hayston; 3d July, 1673, Gordon *contra* Fraser, p. 80. *Svo*, Russell *contra* —; Grahame and Stewart, December, 1674; Campbell *contra* Campbell, p. 81 and 82. *9no*, The same Campbell and Campbell, December, 1673, and Stewart and Grahame, p. 115 and 117; *item*, Home and Smith's case again, (which I have marked *supra*, No. 402,) p. 120. *10mo*, 7th February, 1673, Dame Elizabeth Burnet *contra* Sir Alexander Fraser, p. 127. *11mo*, George Cockburne of Pilton and Hermiston's Creditors, p. 130, done on the 3d December, 1674.

Nota.—Beside thir decisions I have here pointed the finger at to be considered there, there be several others, preceding that date of 1673, which I refer to be seen in the book itself.

Advocates' MS. No. 500, folio 262.

I HAVE also several Decisions and other Law Remarks belonging to this last Summer Session, 1676, (for as to remarks and observations of law written by me, in haste, upon loose and dispersed papers, such as came to hand for the time, besides what is contained in this Collection *ordine temporis*, and that separate paper-book I wrote in June and July last, I have infinite numbers of papers, which were an impossible labour for me to draw unto this place; therefore see a short inventory of them,

compendized and drawn like an index and memorandum of the heads where they lay, without any order imaginable;) which notes, belonging to the last Summer Session, I have written in a MS. by itself; and, in regard this was the proper place of these Observes, therefore I shall, *digito quasi*, hint at the generals therein contained that are relative to this last Session, in which I may be the shorter, both because they may be found where I have written them, as also in regard I have engrossed some of them in one or other of the above-mentioned Decisions. In which book the following things are to be found:—

1^{mo}, That the Lords of Session will receive relevant exceptions *quocumque tempore*, if instantly verified.

2^{do}, *De curatore surdo dato*; see it enlarged, where I tell that Sir George M'Keinzie is adjoined to the King's advocate.

3^{tio}, Anent the Lords interponing their authority to vendition of minors' lands.

4^{to}, Of dispossession, and bruiking the fruits *bona fide*.

5^{to}, About pursuing a messenger for deprivation.

6^{to}, Anent a strange clause of registration and warrandice under an oath, and citing the King by his officers of state. Of the King's depriving the clerk-register. Anent pursuing declarators on the expiration of the legal of a comprising. Of the old style of bills to the Lords of Session. In how few a number a community may subsist.

7^{mo}, In July, 1676, in Alexander Somervell's cause against Gilchryst, the Lords modified what the liferentrix should pay for upholding her liferent lands. *Vide infra*, No. 503, thir same parties, 8th November, 1676.

8^{vo}, Craigie, as Justice-Clerk, nominated the clerk to the Border commission.

9^{no}, In July, 1676. When a man's land is thirled to an heritor having two mills, the Lords left him at his choice to go to any of them.

10^{mo}, Anent the convention of burghs, their fining Alexander Rosse, commissioner from Dornock.

11^{mo}, Anent valuing parsonage teinds, &c. Escheat falls, though denounced not at the cross where the lands lie, but where the party dwells; see this marked *supra*, in the Marquis of Atholl's action of declarator, § 2, about the competition between equity and strict law. Anent the heiress of Craigleith her marriage. Anent the contracting Strathuird's daughter to the Marquis of Atholl's son, though both infants. How many several ways a wadsetter's heir, that is to renounce his wadset on an order of redemption, may establish a right and title in his person, without entering heir, that he may dispoise and renounce validly. That the accepting a right with the burden of a reversion is an acknowledging the reversion, but not where it is allenary excepted from the warrandice. See both thir two, *supra*, in Sir Alexander Frazer's case *contra* Hog of Blieriedren, and Sir Andrew Ramsay's *contra* Francis Kinloch.

12^{mo}, Anent the dilator of one's being out of the country. And if the Lords' decret of improbation should prove *in judicio criminali*, as in Kennedie's case. And how far other children beside the apparent heir may pursue exhibition *ad deliberandum*. Anent the ignorant conception of many testaments and contracts matrimonial in Scotland, and about the three several ways of conceiving destinations and

clauses of conquest in favours of children of the marriage; which see marked, *supra*, in Catharine Mitchell's cause *contra* Littlejohns.

13*tio*, That Dumfermling's subscribing his father's count with James Deans was not a becoming liable for it. Anent long pleading and pertinent exordiums. Anent the officers of the militia. And the defender's condescending on the date of writs sought to be improven.

14*to*, That a general discharge of sums of money does not comprehend a reversion, in July 1676; see it *supra*, Sir A. Ramsay *contra* Francis Kinloch.

15*to*, That one is obliged to assign an inhibition on payment, John Mitchell *contra* Sir William Bruce.

16*to*, Anent a decreet *cognitionis causa*, summarily to be given; see it *supra*, John Nasmith *contra* William Hally.

17*mo*, In the late adjudications introduced in 1672, the bond needs not be registrate.

18*vo*, I cannot debar a defender with horning, to whose oath I refer my libel, so found July, 1676. *Vide infra*, No. 517, *in principio*.

19*no*, The Lords annulled Whyte of Thurston's disposition granted by him to B. Carmichael, both because done *in fuga et conjunctæ personæ*. *Eodem tempore*, Anent the hindering Mr Robert Deans and other heritors to rebuild the burnt land.

20*mo*, Anent the King's power in erecting a sheriffdom; anent judges being *non-liquet*, and a pursuer's spinning out his separate grounds one after another; as to which see Sir A. Ramsay *contra* F. Kinloch, *supra*.

21*mo*, Anent valuing the teinds of mensal kirks, &c.

22*do*, If a simple tenant can sublocate to another.

23*tio*, If a bond granted to a person lying in prison be good and unquarrellable, *ex capite metus*. And what if a person give over a house 40 days before the term of Whitsunday, or be not entered 40 days after the term?

24*to*, How long those that are thirled are obliged to attend at a mill broken, or wanting water. Of what sums bearing annualrent and made moveable the relict falls a third, or can be debarred. And what if the creditor or debtor in the bond die before the term of payment come. With sundry other remarks there which deserve well to be read and considered, and, therefore, without adding any more, I refer to that place.

See a continuation of thir remarks in October, 1677, No. 643.

Advocates' MS. No. 501, folio 262