

moved upon these grounds, that of old, by the style of testaments, universal intromitters and legators were *pares termini in jure et homonyma*, as likewise, that the defunct had provided all the rest of his children to reasonable portions, so that having great debt upon his estate, he could not in reason, but dispose of that which was his own to relieve the great distresses it lay under; but some others, whereof I myself was one, was of another opinion, that there being no express universal legacy, which was so great an interest of the whole moveable estate of the Earl of Buccleugh, and his testament being drawn by Mr Francis Hay, one of the ablest writers of his time, and advised by the ablest lawyers, there is no doubt if it had been so intended, they would have expressed universal legator, which was as easy as universal intromitter, knowing that long before that time, that interpretation of universal intromitter was obsolete, and out of doors by practice and custom. *2do*, The provisions made to David were not very considerable, he being the only younger son, and the portions given to the daughters were at most but reasonable, and not exceeding what was given to other ladies who were not near of so rich families, and by none of them any were secluded from their portion natural, nor were they given in contentation.

*Fol. Dic. v. 1. p. 24. Gosford, MS. No 959.*

No 15.

1680. July 15. EARL OF NORTHESK *against* GEORGE CHEYN.

THE LORDS, in a declarator that a bond was merely in trust, ordained Mr Patrick Home, the defender's advocate, to be examined as a witness, in so far as he knew the conveyance by information of other persons than his client; but refused to examine him on the information of his client, because an advocate is not obliged to discover his client's secrets.

*Fol. Dic. v. 1. p. 26. Fountainball, MS.*

No 16.

An advocate not obliged to divulge his client's secrets.

1681. February 3. ———. *against* STUART of Archattan.

ONE ——— pursued Stuart of Archattan, which being called, compareance was made for Stuart of Archattan, who craved to see.—It was *answered*, Archattan being a residenter in Ireland, no advocate could compare for him without a mandate; for though the trust of advocates presumes a mandate, as to those residing in the kingdom, that was never extended to residenters out of the kingdom.—It was *answered*, That though a warrant be requisite for foreigners, yet Archattan is a Scotsman-residing in Ireland, and hath an estate in Scotland.

THE LORDS found, That there could be no compareance for Archattan, he residing in Ireland, without a warrant in writ; and therefore refused a fight, and ordained the decret in absence to be given out.

*Fol. Dic. v. 1. p. 25. Stair, v. 2. p. 853.*

No 17.

An advocate cannot appear for parties out of the kingdom, without a written mandate.