

had no mandate from any of them, nor ever knew them, and antedated the same; which the Lords found all one upon the matter as if he had affixed their subscriptions: and so found him plainly guilty of falsehood and forgery.

The next question was, If the Lords would proceed to punish them, by their own sentence, or if they would remit them to the Justice Court?

It was argued, The Lords had no power to inflict any punishment but *infra mortem*, and that their guilt was so flagrant and palpable that there was a necessity for some example to discourage such impudent growing boldness; and such flagitious contrivances deserved death: Therefore, the Lords unanimously remitted them both to the Lords of Justiciary, to be tried and punished by them, according to law.

NOTA.—They were both hanged on the 18th of February 1708, as an example, to the terror of others.

The Lords began with thir two, as being more atrociously guilty, and resolved to try the rest of them concerned in this forgery at another time, whose crimes might only amount to fining, pillorying, deprivation from their offices, or banishment.

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*December 26.*—The Lords having, 9th December 1707, remitted two of the forgers, as more deeply guilty than the rest, to the criminal court, they called the other three out of prison, viz. Gibson, the messenger, Haliday, the writer, and Robertson, the schoolmaster. And having interrogated them, whether they would abide the hazard of their trial, or consent to a voluntary banishment, in regard of the many presumptions of their accession to the guilt; they all choosed rather to undergo banishment: whereupon a bond was drawn up and subscribed by them; whereby Gibson and Haliday obliged themselves to remove out of the isle of Great Britain within the space of three months after the date hereof; never to return, without the Queen or her Privy Council's special licence and warrant: With certification, If either they staid after the limited time, or returned to Britain, they should be presently imprisoned, and transported to the Plantations in the West Indies. And, in regard Gibson was both a notary-public and a messenger, they deprived him of both offices, and declared him incapable in all time coming; and ordained this, for certiorating the lieges, to be intimated at the Lord Lyon's office, and to the clerk of the notaries respectively. And, because Robertson's accession is not so fully made out, they only banished him out of the Town of Edinburgh and the three Lothians, never to return, under the above mentioned certification: for they could not make it under the pain of death, because they were not convicted of a capital crime, but only consented to be banished. And the Lords allowed him three months for transporting himself and family, and seeking out a new habitation, but discharged him to teach a school within that bounds any more.

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1707. *December 30.* ISOBEL ELLIES, Lady Invergelly, *against* ROBERT LUMISDEN of INVERGELLY, her Husband.

ISOBEL Ellies, Lady Invergelly, having several years not cohabited with her husband, Robert Lumisden, Laird of Invergelly, in respect of his alleged

*sævitia* cruelty and severity to her, and having no allowance for living apart from him, she pursues a summons of aliment; wherein it was admitted to her probation what maltreatments she met with, and what was the extent of his estate out of which the aliment was to be modified: and it was sustained to him to prove intolerable provocations, and that she had a separate estate of her own, whereof she was in possession, from which his *jus mariti* was secluded.

The probation falling to be advised, the Lords found maltreatments proven to a very high degree, and that he had only L.1000 Scots by year, the creditors possessing the rest; and he had proven no preceding provocations, except some chiding words. And the Lords thought that no provocations could excuse such usage, save only unchastity or adultery. And, as to her separate estate, it was proven, by a contract betwixt Sir Alexander Anstruther and her husband, that the result of her estate was 15,000 merks, provided to her in liferent, and her son in fee; but that she, looking on this balance as too small, had never accepted of it. Therefore, the Lords modified L.50 sterling to her of yearly aliment, with this express quality and burden, That he should have access and liberty to uplift the annuity foresaid provided to her out of the 15,000 merks of stock, aye till she think fit to accept of it, and then this aliment to cease.

The next question was, *a quo tempore* it should commence,—whether *a lite mota*, or from the date of the interlocutor, or from the act of litiscontestation? And the Lords drew it back to the date of the citation on this summons; but, in regard the separation was several years prior to the summons, they reserved the consideration how far back this aliment should go. And it being demanded for Invergelly, that some partial modifications for aliments, being given her before, in the interim, might be defaulted from the years now decerned for; the Lords refused the same, but declared they should be deduced and allowed out of the years prior to the summons, when the same came to be determined; in regard she had all that time been borrowing money, and paying annualrent for it, through his default.

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1707. January 3. CAMPBELL of INVERAW *against* CAMPBELL of LAWERS and CAMPBELL of BURNBANK.

THE Laird of Inveraw having married a sister of James Campbell of Lawers, he, in the contract, obliged himself for 5000 merks of tocher; and, some time after, Lawers prevailed with him to restrict it to 3000 merks, for which he gives bond; but both thir are done in his minority. Lawers being distressed on the last abated bond for 3000 merks, he granted a corroboration ratifying the same, in his majority: and, being afterwards in the messenger's hands, Campbell of Burnbank gives a bond of presentation to sist and produce him betwixt and a certain day, and that without sist of execution, or suspension: and, in case of failyie to pay the debt, Burnbank presents him at the day; but produces a passed bill of suspension, whereon the messenger is forced to dismiss him. When this suspension came to be discused, Lawers repeated a reduction against Alexander Campbell, executor-creditor to Inveraw, and otherways having right to the tocher, that the obligation in the contract matrimonial and the restricted bond ought both to be reduced, because done in minority, to his evident lesion,