

1611. *January 25.* DREW *against* HORNE.

No 3.

A MAN being hurt and wounded, taking satisfaction from them that hurt him, and granting, that it proceeded of his own default, and therefore granting him fully assythed and satisfied by them;—if, thereafter, he die of these wounds, and his slayers take remission, and being called to underly the law, take him to his remission, and find caution to assyth the party, as accords of the law;—the confession of the defunct will not assolzie him; and his assythment will not relieve him at the hands of the defunct's nearest friend, *quia hoc ipso*, that he has taken and used the remission, he acknowledges his guiltiness, and therefore must assyth the defunct's nearest kinsmen.

Fol. Dic. v. 2. p. 341. Haddington, MS. No 2122.

1767. *February 24.* MACHARGS *against* CAMPBELL.

No 4.

A PERSON was found liable in an assythment, upon the sentence of a court-martial, which had declared him guilty of a murder, but had only ordered him to be cashiered, as there was not such a majority as is required by law to authorise a court-martial to pronounce a sentence of death.

Fol. Dic. v. 4. p. 226. Fac. Col. Sel. Dec.

. This case is No 429. p. 12541. *voce* PROOF.

1768. *January 8.*

LADY-LEITH-HALL, and her CHILDREN, *against* EARL FIFE, Donatar of Escheat.

No 5.
Nature of an
assythment.

JOHN LEITH of Leithhall was murdered on the street of Aberdeen, 22d December 1763, by James Abernethy of Mayen, who having made his escape, a criminal prosecution was brought against him. He having failed to appear was declared a fugitive and outlaw. A gift of his escheat was procured for behoof of his wife and children; but with this proviso, that it shall be without prejudice to a claim of assythment by the wife and children of the deceased, if such claim be competent in law. An action was accordingly brought upon this claim, which was much controverted in the Court; and the doubtfulness arose from mixing the two senses of the word assythment, which occasioned much reasoning that was not applicable to the real case.

When the punishment of murder, or of any other crime, is inflicted, full satisfaction is understood to be given both to the public and to the private party concerned, after which no vergelt, or composition for slaughter, is due to the relations of the person slaughtered, such as would be due if the criminal were

protected from punishment by the King's pardon. The King may pass from the atonement due to the public; but the private party concerned is entitled to have his resentment gratified, either by condign punishment, or by a composition, which in that case is stiled assythment. In the present case there can be no claim for such assythment, because Mayen, the criminal, has got no pardon; on the contrary, will suffer capital punishment if he be apprehended; and while this matter is uncertain, there can be no claim for assythment, for it would be absurd that a man should be liable to punishment even after paying a sum to free him from it.

But assythment, in a more general sense, means the reparation that is due to an innocent man who is hurt by a criminal act. In that sense, reparation, or assythment, is unquestionably due. If a man, who is culpable only, be liable in damages, what doubt can there be of his being liable when the damages are occasioned by his being guilty of a flagrant crime?

"THE COURT accordingly sustained the claim for assythment."

Sel. Dec. No 258. p. 339.

1804. February 9. BLACK against CADDELL.

HENRY BLACK, tenant in Scotstown, returning home on horseback, in a dark tempestuous evening, in January 1801, by a road leading through the estate of Grange, belonging to William Caddell of Banton, fell into an old coal-pit near the road, and was drowned, together with his horse.

The pit had been opened by the former proprietor, but for many years had been abandoned. As it had been used as an engine-pit, the mouth had been surrounded by a wall of stone and lime, which, at the time of the accident, was about eighteen inches high. It lay about four feet from the road, which had been a road used by the proprietor when the coal was formerly worked, but which was also frequently used by the neighbourhood, as the field through which it led was uninclosed.

An action was brought against Mr Caddell and his brother, John Caddell of Cockenzie, by the Children of Black, concluding against them for the expense attending the search for his body in the coal-pit; for the price of the horse which perished along with him; and for L. 2000, as a reparation for the loss and damage sustained by the death of their father.

THE LORD ORDINARY, (12th November 1801,) "having considered this condescendence, with the answers thereto, with the plan and copy of writings therein referred to, and having visited the ground where the pit is situated, in which the pursuers' father lost his life, assolizes the defender, Mr John Caddell, in respect he had ceased to be proprietor of the ground before the accident happened; as to the other defender, William Caddell, observes, that though there are some particulars, in point of fact, about which the parties differ, yet the most

No 5.

No 6.

The owner of a coal-pit, improperly fenced, obliged to pay damages to the family of a man who had fallen into it, and perished.