

D E A T H

S E C T. I.

*Morte Mandantis cessat Mandatum; unless the Mandate be
in rem alienam.*

1581. May 6. RAMSAY against Executors of LADY CULL.

JAMES RAMSAY, son and aire to umquhil Mr David Ramsay, pursued for the cancellation of ane perfect contract, made betwixt the said umquhil Mr David, taking the burden upon him for his wife and bairns, on the one part, and umquhil K. Lady Cull, and James Crichton of D. her spouse, for his interest, and thereupon summoned the executor of Lady Cull and Mr David — her spouse, for his interest. Amongst other allegiances made in writ against the cancellation of the said contract, it was *alleged*, that the said contract ought to be cancelled as an imperfect evident, and that tuik na effect; because the twa wives of Mr David — and —, were principal contractors in the said contract, and their husbands but for their interests, and the said wives and Ladies had not subscribed the said contract, nor no verification thereof made in their name. To this was *answered*, That, in so far as the husbands had subscribed the same, it was sufficient for the wives' part without their subscription; *quia maritus est dominus bonorum mobilitum de jure Scotiae*. To this was *answered*, That there was renunciation of rights, tacks, and actions, and acceptation of assignation and discharges *hinc inde, et fuerunt jura, actiones, et nomina debitorum*, the whilk principally appertained to the wives, and therefore the consent behoved to be interponed.—THE LORDS repelled allegiance and reply made by Ramsay; and fand, that the subscriptions of the husbands were sufficient, without the subscriptions of the wife. See HUSBAND and WIFE.

In the action and cause foresaid, it was *alleged* be James Ramsay, That the contract should be cancelled and destroyed, because it should have been filled up in ane blank part of the same, whereuntill the soume of silver was to be put.

NO I.

In the case of a contract, blank in the sum, to be filled up by a third party with what sum he thought fit, the Lords found, that tho' this was not done in his lifetime, yet, if he gave orders for another to do it, that was sufficient, notwithstanding of the rule, *mortuo mandante cessat mandatum*.

No 1.

be umquhil the Earl of Murray Regent, and the same not being filled in his lifetime, could not be now filled, *quia mortuo mandatore expirat mandatum*. To this was *answered*, That the contract was made with the advice, consent, and assistance of the said Earl, *prout verba in contractu sonabant*; and the defender offered him to prove, that the said Earl, before his decease, gave command to Mr John Wood, his secretar, to fill up the same blank, with the soume of 300 merks. To this was *answered*, That the allegiance was not relevant, except they wald allege that the said Earl had power to do the same, whilk was not contained and expressed in the blank.—THE LORDS admitted the Earl's command to be proven *per scripturam*. *Ego tamen fui singularis in opinione mea*, that the said blank could not be filled up after the decease of the said Earl, *nullo modo, quia electa fuit industria personæ in predicto Comitæ; et mortuo mandatore expirabat mandatum; et mandati sunt observandi diligenter in forma specifica, de qua vide L. C. mandati et ibidem Cartol. et vide etiam glossam in cap. ad agendum in sexto ibidem*.

Fol. Dic. v. 1. p. 209. Colvil, MS. p. 298.

No 2.

1628. February 2.

DUFFUS against FORRESTER.

THE executor of the umquhil Laird of Duffus pursued John Forrester for exhibition of a bond of 500 merks made by the defender to Duffus. And being exhibit to hear and see the same registrate; *alleged*, He cannot exhibit the bond, because umquhil Duffus by his letter, directed to the defender, desired the said defender to pay to David Sutherland, carrier of the letter, the said sum, and receive his bond from him; conform whereunto he paid the sum to David, and retired his own bond and cancelled it. *Replied*, Not relevant, unless it were alleged that he paid conform to the letter before Duffus's decease. Which reply the LORDS sustained, *quia mortuo mandatore expiravit mandatum*.

Fol. Dic. v. 1. p. 209. Spottiswood, (EXHIBITION) p. 123.

No 3.

The rule, that *mortuo mandante cessat mandatum*, was found not to take place in a procuratory *in rem suam*, where the procurator, who, by virtue of his procuratory,

1629. June 30.

SHAW against L. DUNIPACE.

A PROCURATORY made by the consituent, to his procurator, to pursue for some debts owing to the constituent, was sustained as a good title to pursue the debtors thereupon, for payment to the procurator, and the action was sustained at the procurator's instance, after the decease of the constituent; and the allegiance proponed against the action and procuratory, *viz. quod mortuo mandatore expirat mandatum*, was repelled; in respect, by the procuratory, the constituent made him procurator *in rem suam*, because of payment made to him by the pro-