

LOCUS PŒNITENTIÆ.

1772. November 21. The TRUSTEES of CHARLES MURRAY *against* SIR HARRY SETON.

AFTER various communings between Sir Harry Seton and Charles Murray, collector of the customs at Borrostowness, they landed in this, That, if Charles Murray would resign his office, and lodge the resignation in a friend's hand, and that Sir Harry should succeed to him, within six months after the date of his resignation, he would pay him £3000. Sir Harry hoped to obtain this place through the interest of his friend, Sir Laurence Dundas, with the minister; and he considered the bargain as advantageous, being about years' purchase. Accordingly Mr Murray, though he did not resign his office, yet wrote a letter to Sir Laurence, declaring his willingness to resign, once within six months, whereby Sir Laurence was at liberty to make application for any friend in his room; and, on the other hand, Sir Harry agreed to grant a bond to Mr Murray for the money, to be lodged in the hands of two friends of Mr Murray, but under a back declaration, to be redelivered within six months from the date of delivery, in case he, Sir Harry, should not within that space be appointed collector at Borrostowness. At this time the parties were at London; but the bond, being to be signed by a cautioner in Scotland, was transmitted to Sir Harry's agent, at Edinburgh, for that purpose; and Mr Murray's two friends, who were to receive it, as above, were also at Edinburgh. Things in this train, Mr Murray died at London, the morning of the day when the bond was to be delivered; but Sir Harry's agent, not knowing this, delivered the bond some hours after; and, in a short time after Mr Murray's death, Sir Harry, upon the vacancy of the office by his death, was appointed collector in his room.

The question came, Was the bond due? Sir Harry suspended a charge upon it, for these reasons:—

Primo, He contended, that the bond was null by the statute of Edward the Sixth, against the buying and selling of offices, which, though originally one of the revenue laws of England, was now to be considered as part of the revenue laws of the United Kingdom.

Secundo, It was unlawful at common law, *et contra bonos mores*.

Tertio, It was a condition of the transaction, that Mr Murray was to grant a resignation of his office, which, in fact, he never did.

Quarto, That the transaction was incomplete at Mr Murray's death; he having died at five o'clock of the morning of the day upon which the bond was delivered, so that it was by an error, in fact, that the bond was delivered.

Quinto, That, being incomplete at Mr Murray's death, it could not be made complete afterwards.

Sexto, That the nature of the agreement was such as rendered it not only necessary that Mr Murray should have resigned, but that Sir Harry should be

appointed, during Mr Murray's life, and upon the vacancy occasioned by that resignation. But this was not the case which happened: Mr Murray enjoyed the office till he died; and, upon the vacancy occasioned by his death, Sir Harry succeeded,—none of the communings having ever been made known to the minister, nor any application made to him till after Mr Murray's death. It was even denied that they were known to Sir Laurence.

The Lords, on report of Lord Kennet, "Sustained the reasons of suspension, and suspended the letters *simpliciter*."

They did not particularise the grounds of their judgment. The two first reasons of suspension were mentioned, but rather departed from by the parties; but, upon the whole, the Lords held the transaction as incomplete at Mr Murray's death.

MANDATE.

ROBERTSONS *against* BOSWELL.

BOSWELL, factor for Watkins, gave directions to Gray, procurator at Haddington, to apply to the Sheriff, first for a sequestration, and then for a roup of the stock and crop of Robertsons' tenants at Skedbush, belonging to Watkins, founded on the hypothec, (see *Hypothec*.)

Gray did so, obtained the first, and carried the last into execution.

Robertsons complained of irregularities in the proceedings concerning both, and brought a process of damages: they called Boswell, Gray, the officers of Court employed in the execution, and the Sheriff. Boswell pleaded, that he did no more than to desire a judicial application to be made to a judge, in behalf of his constituent, and that he was not answerable for any informality in his procurator, or in the judge, or in the officers under him.

The Lords thought, that a judge convicted of corruption was liable to a party in damages. In this case, however, there was no pretence of corruption, but merely a precipitancy of procedure proceeding from no bad intention, proceeding also from the applications of Gray as procurator for Boswell. They thought that judicial procedure is much *periculo petentis*, and therefore that Boswell was liable as well as Gray, leaving them to settle matters between themselves. And as Gray was dead, and his heirs not in the field, they gave damages against Boswell; but they assoilyied the Sheriff and his officers.

They had done otherwise in a cause determined
from the county of Sutherland.

1774, coming