

then reputed *mortuus* in law, and not having *personam standi* he could not give charge.

No 3.

Fountainhall, v. I. p. 204.

* * Sir P. Home's and P. Falconer's reports of this case are No 70.
p. 2143. *voce* CAUTIONER.

1683. November. Mr JAMES KEITH against Sir WILLIAM PURVIS.

MR JAMES KEITH, writer in Edinburgh, having acquired right to a litigious apprising from James Allan, writer, and thereon insisted in the reduction of another apprising; the defender *alleged*, No process; because, by the 216th act, Parl. 14. Ja. VI. it is not lawful for members of the College of Justice to buy pleas, and the pursuer's title was such a bought plea, which being an unlawful acquisition, cannot found a legal process.

No 4.

An apprising, although acquired by a member of the College of Justice, found an effectual title, notwithstanding the prohibition to buy pleas.

Answered; The prohibitory clause of the act is not *in rem scripta* declaring bought pleas simply unlawful, but is only a personal prohibition; *2do*, The act doth not annul the deed, but only inflicts a punishment upon the contravener, as was found in my Lord Cranston's case, 30th July 1635, No 34. p. 3210. and in Sir Thomas Hope's, November 9. 1624, No 19. p. 7943; and it is clear from the current acts of Parliament, that where the deed is designed to be annulled, it is expressly so declared; witness the many laws concerning the export or import of several goods and commodities.

Replied; The act *hoc ipso* by declaring the deed unlawful, intends it should be null; and the adjecting sometimes the clause of annulling in prohibitory statutes, is but done *ob majorem cautelam*, for declaring the lawgiver's *enixam voluntatem* against such deeds.

"THE LORDS sustained the answer, and found, that the acquisition was not null by the act of Parliament, and that the party might insist for the punishment of deprivation, as he thought fitting. But he, Mr James Keith, had deserted his employment ten years before." It was not regarded, that James Allan being also a member of the College, it was but the acquiring of a plea by one member of the College of Justice from another.

Harcarse, (ADVOCATIONS AND ADVOCATES.) No 13. p. 4.

* * * Fountainhall's report of this case is No 47. p. 9500. *voce* FACTUM
ILLICITUM.