ANSWERED,—You have ratified the tailyie and mortification, and so can never quarrel it now. REPLIED,—This commission to name the patrons is posterior to my ratification, and so can never fall under the same.

DUPLIED,—Though it cannot expressly comprehend it, yet, you having ratified the mortification, you have consequently ratified all that followed thereupon.

The Lords found this ratification could not hinder Tulloch, nor Pitcairly's nearest heirs, whose right Tulloch had acquired, to quarrel the same, as done on deathbed. Another reason of reduction was, that the said commission was never delivered in Pitcairly's lifetime.

The Lords found it needed no delivery; because it bore to take effect after his decease, and so was of a testamentary nature. *Vol. I. Page* 662.

1695. *January* 24. ROBERT CRAIG of RICCARTON *against* DAVID KENNEDY of BELLIECULTRA.

ARBRUCHEL reported Robert Craig of Riccarton, advocate, against David Kennedy of Belliecultra in Ireland, for repetition of some articles allowed him in a discharge, when the pursuer's brother and he counted for his intromissions with the rents of his lands in Ireland, as being *indebite solutum.* The defence was, *Actor sequitur forum rei;* which, in law, is *quadruplex,—viz. originis, domicilii, rei sitæ, et contractus;* none of which meet here.

ANSWERED,—The brocard is true, but has many exceptions, whereof this is one, *Si reus foro renuntiaverit, l. 65, D. de Judic.* Which this defender had done, by making his accounts in Scotland, and getting his discharges here; so it became *locus contractus:* likeas, he was in Scotland when cited on this process.

The Lords found the defender not convenable before them, unless the pursuer could instruct that he had effects in Scotland, either heritage or moveables, which he could attach by diligence. And, in Murray of Broughton's case, where the Lords found themselves competent judges to an Irish estate, it was because he had also an estate in Scotland. Riccarton's design, if he had obtained a decreet, was to have watched him when he came to Scotland about his trade, and then to have attached him. Some thought, as to the discharges in Scotland, his counting here founded the jurisdiction; but the plurality assoilyied him, as not liable to answer here. *Vol. I. Page* 662.

1695. *January* 25. OLIPHANT of CONDIE *against* BAILIE CHARTERIS.

OLIPHANT of Condie against Bailie Charteris, as come in Margaret Crawfurd's right. The Lords found the reservation of the reduction in the former decreet did not meet the Bailie, a singular successor, as the *supersedere* meant not a discharge. *Vol. I. Page* 663.