

such paper, but it was wholly forged ; and he offered to improve the same as false : and craved that Drysdale, and Moodie his agent, may be cited summarily to abide at it *sub periculo falsi* ; and, if they decline, then to be punished as falsaries and users.

It was ANSWERED for Drysdale,—That the affair is a great surprise to him : He knows nothing of the manner how his adjudication was obtained, only he knows it is led for true and just debts, and he has no accession more or less to that disclamation and consent produced, nor never heard of it till of late ; neither will he abide at the truth of it, seeing his adjudication, though stopped for a time, cannot fail but to go at last ; and for him to participate its extract, there can be no reason to think he would be so foolish as to forge a paper.

And as to Moodie, it was ANSWERED,—The post of Alloa brought him a letter subscribed by nobody, wherein the said consent was inclosed ; and he thinking it a true deed, like a messenger's execution sent to one, produced it in the clerk's hands, and is not obliged to stand to its verity.

The Lords finding the paper disowned, they ordained the adjudication to be brought back and cancelled ; but finding it was allowed and recorded, they demurred, and first ordained the forgery and using to be tried, in order to punishment of the guilty ; for it seems to be a slender excuse to say, It was sent me, I know not by whom, and I now pass from it ; for every forger may bring off himself that way, if it were allowed as sufficient : And then the Lords would consider how far they would recal the adjudication, and grant warrant to mark its being cancelled on the margin of the register where it stands recorded.

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1703. December 21. JAMES LESLIE against PATRICK COMRIE.

JAMES Leslie, writer in Edinburgh, gave in a complaint against Patrick Comrie, factor to Campbell of Lawers's estate, bearing, That he being agent for Lawers, and reasoning with Patrick about his client's business, Patrick did beat him in the face in the Outer-House, in presence of sundry advocates, while the Lords were sitting determining causes ; and so was guilty by the 173d Act 1593, discharging any to invade another, while the Lords are sitting, under the pain of death,—the injury receiving an aggravating, atrocious circumstance from the place where it is perpetrated ; and, therefore, craving a warrant to apprehend him ; which the Lords granted. But sundry questions arose on this case ; *1mo*, If the said Act founded on was truly an Act of Parliament, seeing it mentions only the King and Lords of the Articles in the narrative, who have no statutory power alone, without the concurrence of the three estates. But this was only thought to be a specialty in the style ; and it has ever since been esteemed as an Act of Parliament, and founded on as such. *2do*, If the beating of a party's agent in a depending plea, by the other's agent, will fall under the compass of the Act of Parliament, making the certification of beating one another *pendente lite* to be the loss of the cause on the invader's part ? But there seemed to be no reason for such an extension in a penal statute, which precisely relates to the parties themselves only, and not their doers. See the case of the *Tenants of*

*Duncow* against the Earl of Nithsdale, in Stair, 18th February 1672, on the 219th Act of Parliament, 1594.

3tio, It was questioned how far the Lords could judge this case, being capital.

Some affirmed, that if one party assault another in presence of the Lords sitting in judgment, they may cognosce it, though the punishment to be inflicted by law be no less than the pain of death; because a sovereign court has that jurisdiction inherent to vindicate their own authority, and punish any affront or injury offered thereto.

It was argued by others, that, no doubt, the Lords had *mixtum et merum imperium* to make their jurisdiction effectual, where the punishment was either pecuniary or corporal, below death; but if the crime was capital by law, all they could do was to secure the delinquent, and remit him to the criminal court, where he must be tried by an assize; which the Lords cannot do: and this is clear in the case of falsehood, which the Lords cognosce either in the direct or indirect manner; and when they have found it proven, they remit it to the Justiciary, where the decreet of improbation is *probatio probata* to the assize; but the Criminal Court must condemn him, and so the foresaid Act ordains it to be criminally tried. And by a decision in *Dury*, 14th July 1638, *Dumbar* against *Dumbar*, the Lords found, where the punishment to be inflicted is arbitrary, they may impose it themselves; but, if it be capital, they can only remit it to the justices, as the sole judges competent thereto.

Mr Comrie procuring a remission from the Queen, it came, in the fourth place, to be questioned, how far that could liberate him from giving satisfaction to the party by a *palinodia*, and acknowledgment of his fault, and craving him pardon.

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1703. December 22. MR DAVID DEWAR against The EARL of MAR and the TENANTS of ALLOA.

MR David having right by progress to two old infeftments of annualrent, granted by one of the Earls of Mar in 1631 to Sir John and Sir Charles Erskines, his sons, he pursues a poinding of the ground. The present Earl compears, and produces his public infeftment on the estate of Mar, proceeding on an adjudication; and objects against Mr David's authors' rights, that they were only base, and the bonds of provision, the warrants thereof, were not produced, and the seasines were not probative, being only the assertion of a notary. 2do, One of the seasines was null, wanting the notary's sign on the left side of his attest, which bears the knot with his name and motto, and which are specially required by the 76th Act 1540, and Act 79, 1563, where notaries are ordained to register the sign and subscription they are to use in all time coming, and to insert it in the books at their admission; and who does otherwise, they are to be punished to the death, and their notes and instruments to make no faith.

ANSWERED for Mr David,—That now, after forty years, he was not bound to produce the warrants, by the 214th Act 1594, especially he being an adjudger and singular successor, who cannot be supposed to have his debtor's rights; but he produces a confirmation of the charters by the Earl of Mar, with a suspension against the liferentrix, and sundry other documents of possession. To