

finite pursuits. And when *the Lords Forret, Newtown, and other criminal Lords*, were pursued by *the Earl of Argyle, in Parliament 1609, for their sentence of forfeiture against his father*, the same was dropt and let fall.

ANSWERED,—The Acts are very clear, viz. Act 45, 1424 ; Act 77, 1457 ; Act 26, 1469. And Act 104, 1540, declares, That judges must have sufficiency of their own, wherein they may be punished, and make up the parties' damages, in case they trespass : and if they do not justice evenly, they are to be rigorously punished at the King's sight, and be deprived totally, or for a time. And there could not be a more gross and palpable injustice than to sustain process and to refuse to call the heritors of the ground : and if a private man, wronging another, is bound to repair, much more a judge, seeing *corruptio optimi est pessima*. The common law indeed says, *Si judex litem suam fecerit male judicando, tenetur parti in damno et interesse* ; but the doctors distinguish whether it be *per imprudentiam* or *dolo malo*. If it be by corruption or gross favour, it is certainly punishable : But, if it be an error *in apicibus juris*, in some nice debateable points, it were a dangerous office to be a judge, if such mistakes should make them liable. It is certain, that ignorance in judges is a very great fault ; but there are two sorts of it, viz. *ignorantia puræ negationis, et prævæ dispositionis* ; and the last is the worst.

The Lords assoilyied the judge from this process for damages.

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1706. July 27. ANNA MACMORRAN against CAMPBELL and LORD CESNOCK.

DAME Anna Macmorran, relict of Sir George Campbell of Cesnock, pursues her daughter and my Lord Cesnock, her husband, for paying her 4000 merks for her mournings and habiliments, conform to her quality, at his death ; having put a room or two in black, covered her street-chair, and clothed two servants, a page, &c. and craved as much for entertaining the family till the next term, being near six months, he having died in the end of November 1703.

ALLEGED,—My lady had a separate estate of her own in Fife, and the moveables, out of which she might reimburse herself ; and though, by a clause in her contract of marriage, she claimed a third of the plenishing, yet the moveable debts far exceeding the value of the whole, she could have no retention of any part of them till the debts were paid. And, as for the aliment of the family, there were provisions of coals and meal, &c. in the house, and so there needed the less.

The Lords remembered, that, about four years ago, in a pursuit of this nature by the Laird of Prestongrange, as assignee by Dame Jean Morrison, Lady Dirleton, his sister, they modified only £1500 Scots for mournings, and £50 sterling for the family's aliment, though my Lord Dirleton's estate was far beyond Cesnock's ; and that luxury in thir cases was not to be encouraged, therefore they only allowed 1000 merks for her mournings, and the like sum for the family's maintenance till the next term, though she instructed by her accounts that she had expended much more on both. Some were for giving her 2500 merks for all ; but the plurality carried for 2000 merks as aforesaid.

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