

That what he said was after provocation,---Cairns having called him unmannerly, and since that time having given him atrocious language ;---in which case lawyers say, That such injuries and offences, as well as the penalties following thereon, *invicem compensantur*. 2do. They were not uttered *animo et libidine injuriandi*, but *ex justo dolore* ;---and, l. 3, sect. 1, *D. de Injur. Provocatus ad iram non proprie committit injuriam*. 3tio. The calling one a rabler is of late but reputed a sport ; *et qui per jocos quid facit injuriarum non tenetur*. See *Decius ad l. 48, D. de Reg. Jur.* Besides, he immediately retracted what he had said ; and *Tiraquil. de Pænis Temperandis, cas. 28 et 60. numb. 2*, allows three days for such retractations.

Cairns, the charger, opposed the probation in his decret, which evidently proved *animum injuriandi* on his part, and took off these topics of *jocus, ira, et justus dolor*.

The Lords adhered to the Commissaries' decret, and found the letters orderly proceeded ; but, finding there was much pique and humour on both sides, they ordered the charger to give in twenty merks of his expenses to the poor.

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1697. *January 26.* SCOT, Relict of ELLIOT of GRANGE, against AIRLY of BLACKHILL.

MERSINGTON reported Scot, relict of Elliot of Grange, and Airly of Blackhill, ---being a competition for preference. The relict claimed both the liferent of 600 merks *per annum*, and likewise of a house, orchard, and acres in Jedburgh. The creditor contended, By the contract of marriage thir were not separate provisions ; but the last was only in farther implement and security of the first *pro tanto* ; for it run in thir terms after the obligation for the 600 merks by year :---“ And farther, in implement, and for the fulfilling of his part, to dispone to her the foresaid house, &c. but during her viduity only.”---Which Blackhill interpreted to be in implement of the first part of the contract, and for her better security.

ANSWERED for the widow, It was a clear addition over and above the former, it having a distinct period, *viz.* her viduity, which the first has not.

The Lords were divided in this, as being dubious, and a *casus arbitrarius de conjecturata mente defuncti*. But the plurality found it an addition to her jointure, and not a security given her only *pro tanto*. *Vol. I. Page 760.*

1697. *January 27.* DICK and CHRISTIE against JOHN SAWYERS.

PHILIPHAUGH reported Dick and Christie, in Stirling, against John Sawyers, factor for the creditors of Bruce of Newton, upon a contract, by which he had sold to them 500 bolls of bear, crop 1695. His reason of suspension was,---Before I could deliver and fulfil my bargain, I was turned out of my factory by the Lords, on a bill given in by some of the creditors ; and so, my title and right to uplift failing, I cannot be liable, it being *factum impræstabile* to me.

ANSWERED, 1mo.---You have obliged yourself in absolute warrandice to us,