

No 17.

defence. Captain Forbes does not plead that ignorance of the law is any excuse, or that any person who transgresses a clear public statute can be presumed to be *in bona fide*; but what he maintains is, that, if he has transgressed, he has been misled by the legislature itself, by the general opinion of the country, and by the decision of this Court in the case of Wick, 1st January 1729, Sinclair *contra* Dean of Guild of Wick*. He saw himself appointed a commissioner in the county, under a character inconsistent with the notion of his being an heritor, or having valuation in the county; and, by the case of Wick, he saw that persons named *ratione officii* were entitled to act without any other qualification; and it has been the practice, in most counties, that persons named *virtute officii* have acted without any other qualification, and free from apprehension of being liable in penalties: Where a statute enacts penalties, it inflicts them as a punishment for a transgression; and it would be contrary to justice to inflict punishment where there was no intention to transgress.

'THE LORDS altered the last interlocutor, and found Captain Forbes liable in the statutory penalties.'

For Sir John Gordon, *Lockhart, Alexander Wight, and Robert Blair.*
For Captain Forbes, *Ilay Campbell, et Alii.*

*Elphinstone.**Fac. Col. No 108. p. 372.*

 S E C T. IV.

No 18.

Although a decree of spulzie and ejection was obtained against a husband and his wife, as joint actors; yet it could receive no execution against the wife or her executors.

How far the Command of a Superior infers *Bona Fides*.1561. *March 21.*ANDREW WARDLAW *against* The LAIRD of TORREY'S HEIRS.

AN decree of spulzie and ejection being obtenit aganis the husband and wife, as wife and conjunct person with him, and being present with him the time of committing the spulzie or ejection, sould not refave execution, nather in all nor in part, aganis the said wife or her executouris; albeit scho in his lifetime, and lang befor the committing of the said spulzie was *præposita negotiis mariti*; bot the executioun of the said decree aucht and sould come haillelie upon hir said husbandis landis, guidis and geir, becaus the husband sould answer for all his wife's deidis *civiliter*.

Fol. Dic. v. 1. p. 106. Balfour, (HUSBAND and WIFE.) p. 94.

No 19.

Found, that though a wife was accessory to a spulzie committed by her husband; yet, aiter his de-

1565. *Nov. 9.* MR JAMES CREYCHTOUN *against* MARTINE CREYCHTOUN.

THE wife may not be callit or forfeit as wife after his husbandis deceis, for spulzie committit be hir husband, and be hir in his company, alledgand hir to

* Examine General List of Names.