

this he failed, for the 64th act Parliament 1537, names but eight advocates; and eight is a quorum of the Session, being the major part of the fifteen Ordinaries. Yet act 57th *dicto Parlamento* requires ten Lords besides the President or Chancellor; but this is not observed: yea in the Saturday or in the afternoons, or when there have been four Lords at the side-bar, and one on the bench of the Outer-House, I have seen the Lords within not six, with the President. Only they pretend, that concluded causes may be advised, and deliverances on bills given, by a number under the quorum; yet I see no warrant for this, and concluded causes require a great deal of attention and skill; and the Lords present are not only written in the sederunt-books, but were always inserted in the beginning of all decreets, even for some years after the King's Restoration in 1661, (though now disused I know not why,) that it may appear how many were present at the pronouncing the decreet. Yet I know not how the Lords would take it, if one of their sentences were offered to be reduced upon that reason, that it can be proven there were not a quorum of the Lords at the advising it, whether it be an interlocutory point or definitive. *Vide 3d June, 1679. Advocates' MS. No. 565, § 1, 2, and 3, folio 283.*

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1677. June 1. ANENT THE ARRESTING OF CORPSES.

IT was queried amongst the advocates, If a dead corpse might, in the law and practice of Scotland, be arrested and stopt from interment for debt by creditors; on occasion of the Countess of Winton, who died this day, and being addebted to merchants and to sundry trades-people for vivers and other necessaries, they made a great clamour, being poor, and fearing the Earl, her husband, because of the differences, would not own her debt farther than her annuity of 6000 merks reached, which was all forenailed already: They were talking of arresting her body. But certainly though it be tolerated in Holland and some other places, it is reprobated by us as a most barbarous, inhumane custom. Yea the law condemns it for irrational. See Harprecht, *in Commentario, ad § 9 Institut. de Jure Naturali, Gentium, et Civili, numero 17*; where you have express texts prohibiting it, *sub pœna omissionis debiti*. Yea, *mortuo bove legato, nec corium nec caro debetur*, L. 49 *in princ. D. de Legatis, 2do*; *Multo minus hominis debentur exuviae, mortuo homine*. *Vide novellam 60*. See Vantien's Notes on the title *Instit. de Jure Naturali, Gentium, &c.* It could be done upon nothing with us, (except it were upon an express supplication to the Lords of Session, or to Secret Council, which would never be granted,) unless upon a caption which no messenger could execute, since it commands to apprehend the person of such a man or woman; now, being dead, it is no more a person, no more a *hypostasis*, the union being dissolved. However, this arresting has been attempted as to persons dying in prison, but was never allowed nor sustained; only I have heard that a man who dies in prison, it is, *ipso facto*, a discharge of all his debt; this, I think, holds in England, but not with us. Yet when any person dies in the tolbooth, the magistrates cause sight them before famous witnesses, especially the creditors, (if they can be got,) to shew they are truly dead, that no fraud be done of liberating living folk under the pretence as if they were dead.

*Advocates' MS. No. 565, § 4, folio 283.*