do but not bind to answer to any Action at the Superiors Instance unless Bailie duely within the Barony. But this Limitation of the Respect of their Territory is upon Inferior Judges only for the Jurisdiction of the Soveraign Judges Extends over all the Lands 2d Persons are not subject to the Jurisdiction of a Judge, because Exempted from it by some special priviledge as Souldiers, Members of Universities and of the Colledge of Justice. A Judge is incompetent as to the cause, when it falls not under his Cognizance because of the Nature of the Action: as when one of the four Pleas of the Crown is pursued before an Inferior Judge unless the Action be restricted to Damage and Interest, in which case the Judge cannot be Declined as was Decided by the Justice Court 29 January 1667 John & Robert Pedders Pet. or when a Consistorial Matter is brought before a Sheriff or a Maritime affair before a Commissar or when either Party in the first Instance before the Court of Session or when lites Litis pendens, when the same affair is pursued before a Soveraign or More Competent Court. An Inferior Judge may be incompetent as to the Cause, upon the Account of its Intricacy. Thus a pursuit for Theft boot was Advocated ex Capite from a Sheriff Deputee M Lenzie part 1 Fol. 20 & 1 part 2 Fol. 17 & 4. The Lords of Session did pass a Bill of Advocation of a Cause from an Inferior Judge and doubtedly Competent upon this Reason, that there was a Competition of Double Rights. Albeit some of the Lords were of Opinion, that the a cause where in there is a question of Double rights may be Advocated if Intricacy appear therein there ought to be No advocation upon pretence of double rights where there is no Difficulty: because Inferior Judges have as good right to Causes Competent before them, as to any other property. And if it were otherways, the Jurisdiction of Inferior Judges would be altogether Evacuated and the Lords encumbered with processes that may and ought to be Determined by Inferior Judges, Contrary to Act 39 infin. Parl. 6 & 2 M. Act. 9. Parl. 1 Jas. 3 Ch. 2 And others. For that in Removings actions of Mails and duties, and the like Reall Actions, when a Defence is founded on a Right, or when parties appearing for their Interest produce rights, it may always be pretended, that the question is concerning Double rights, Dirletoun 25 June 1675 Decis. 279. Yea a Cause for payment of a bond pursued before an Inferior Court that was Competent to Judge therein, was Advocated upon this Reason, that there was an Improbation of the said bond depending before the Lords of Session, and Continuatio Causae non Debet Dividi 2 July 1673 Relict of Bonnar contra

his

his Representatives Observed by Dirletoun.

The Most Suspect Integrity that can be in Judges is No Hindrance to be the parties who have Causes Depending before them, may not Challenge them or Except against them, upon presumptions that they, the other Judges Competent will act Justicely. Parties are at liberty to Challenge or Except against Judges as Suspect of partiality, 1st when they are within the prohibited Degrees of Consanguinity or affinity to either party. That is any Judge whether Soveraign or Inferior may be Declined in the cause of his father brother or son Act 212 Parl. 14 & 6 or of his father's Brother, or son in Law or of his Uncle or Nephew Act 13 Parl 3 Ch. 2 Stair lib. 4 Tit. 37. § 13. All Judges what soever being upon a Level in the point of Declinator for suspicion of partiality: That I want Sir George M Kenzie's Warrant for saying (Instit. lib. 1 Tit. 2 § 11 Prim. part 2 Tit. 17 § 4. That more trust is Reposed in the Lords of Session in this Matter, than in Inferior Judges who cannot Judge in the causes of such as are Infra Germanos to them. Judges may be Refused not only in the causes of their Fathers and Sons, but also in the Causes of their Grandfathers and Sons in the ascendant line, and in those of their grandchildren and other Descendants. Again Sir George M Kenzie says ibid. the Law (de Act 13 Parl. 3 Ch. 2) Extends the Declinator to the causes of Uncles and Nephews by affinity. Where as the Law Mentions only Uncle and Nephew, which Must be Understood of Consanguineans, or those who are such by blood, and not of Uncle and Nephew by affinity. But whether or not by Analogy or parity of Reason, the Declinator may be so Extended, I shall not take upon me to Determine. The Doctors are of Opinion that a Judge May be Declined upon the Account of Unlawfull Consanguinity, by Bastardy. Prosp. Farinacius Tractatus Crim. part 2 Argum. Judex quando sit suspectus Recusatio Propt. Consang. n. 84. Affinity to Wife is of Uncles or Nephews or to the husbands of Aunts or Nieces, affords No Declinator Stair lib. 4 Tit. 39. § 4 Because this is only a similar affinitatis. One of kin to the King may Judge in his Majesties cause to whom Relation makes none suspect. That in a prosecution at the suit of the Kings Advocate for his Majesties Interest against a Lady who had been servant to the Queen, for Stealing of Jewels belonging to the Queen: A Gentleman of kin to the King was allowed to sit as an assessor to the Justice Deputee in the trial, June 1608 Margrat Hartside. It hath been questioned, whether after affinity in either of the Degrees aforesaid is Dissolved by death, it be the ground of