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of the act of parliament will not admit. And as to the case of forgery, for that very reason that it is competent before this Court, the act of parliament could not take place with respect to the time of commencing and finishing trial, that being what the forms and time of the sitting of the Court could not admit; but as to bail for forgery, it fell under the act of parliament as other crimes; that is, where from the fact charged it appears capital, bail is not admitted; but where it is not clearly capital, the Lords are in use to admit bail.

It carried by a great plurality, 'To admit the petitioner to bail;' but as it had likewise been observed in the argument, that he had been formerly convicted of the like practice of subornation, and that should he get his liberty, he might still continue the practice upon other witnesses in the principal cause of improbation, which was not yet closed; although that was not a sufficient consideration to deprive him of the benefit of the act of parliament, it had this weight, that the Lords put him under the highest bail, which by the British statute they were empowered to do.

*Fol. Dic. v. 3. p. 345. Kilkerran, (JURISDICTION.) No 4. p. 316.*

1774. November 29.

WILLIAM KERR, and AGNES SHAW, his wife, *against* MATTHEW HAY.

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It is competent to the Court to judge in a reduction of a sentence pronounced by an inferior court, upon a criminal charge, and awarding a pecuniary reparation, which the private prosecutors deemed inadequate to the injury sustained.

AN action was brought by Kerr and Shaw, with concurrence of the procurator fiscal, before the Sheriff court of Ayr, against Matthew Hay, charging Hay with an assault and battery committed upon the private prosecutors, when they were going about their lawful affairs along the high-way, and without any manner of provocation; and concluding for L. 20 of assythment, damages, and expenses, and of the like sum to the procurator fiscal of court.

This battery and assault being committed when none were present, a reference was made to the oath of party; and, upon advising the defender's oath, the Sheriff-substitute pronounced an interlocutor, imposing a fine of a small sum, in full of assythment, damages, and expenses to the private prosecutor; and of five shillings sterling to the fiscal.

The private prosecutors, dissatisfied with the reparation awarded to them, brought a process of reduction of the Sheriff-substitute's judgment.

*Argued* for Hay; That a pursuer of a criminal action, brought before an inferior court, cannot, after decree, raise a reduction in this Court, so as to make way for a heavier sentence than the inferior court have thought proper to pronounce.

THE LORD ORDINARY found this action of reduction not competent before this Court, therefore dismissed the same; but, upon a reclaiming bill and answers,

THE COURT thought the circumstance of the name of the procurator fiscal appearing *pro forma* in this libel immaterial, the conclusions being only *ad civilem effectum*, and the libel itself bore a reference to the oath of party; and, as the case now stood, there was no form in which relief could be obtained from the supreme criminal court; therefore,

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THE LORDS 'altered the Ordinary's interlocutor, and repelled the objection to the competency of this Court.'

Act. Dean of Faculty. Alt. Crosbie. Clerk, Tait.  
Fol. Dic. v. 3. p. 346. Fac. Col. No 144. p. 377.

1778. July 14. ALEXANDER MAIR *against* JAMES SHAND.

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MAIR brought an action against Shand for a battery on his person, concluding for damages, and L. 50 as a *solatium* for wounds and bruises he had sustained.

The Court sustained its competency to an action on a battery, *ad civilem effectum*, in the first instance.

Shand *objected* to the competency of the Court.—When the Sheriff, who has a proper criminal jurisdiction in riots and batteries, awards only a fine, the Court may review the sentence, because the matter then becomes properly civil.—But the Court have no jurisdiction to try these delicts in the first instance; Erskine, B. 1. t. 3. § 21.; Alvis *contra* Maxwell, 4th March 1707, Fountainhall, No 113. p. 7403.

The present action is not merely *rei persecutoria*, for the expense of curing wounds. A large sum, *in solatium*, is demanded. The Court, therefore, is required to inflict a penalty on account of a crime.

*Answered* for the pursuers; The Court is competent to every action brought *ad civilem effectum*, though founded on facts of a criminal nature, as in assythment for murder, reparation for damages done by theft, robbery, and damages by a battery, as well as any other injury.

The authorities founded on apply only to the case where the action is brought *ad vindictam publicam*, and for punishment; but the competency of the Court to an action *ad civilem effectum*, is laid down by Erskine, B. 1. t. 3.; and Bankton, B. 4. t. 7. p. 29.

The conclusion for a *solatium* is entirely of a civil nature, being only in reparation of the injury to the private party.

THE COURT 'found the action competent before this Court.'

Act. Erskine. Alt. Hay.  
Fol. Dic. v. 3. p. 346. Fac. Col. No 32. p. 53.