1775. *December* 16. JOHN MAXWELL, Procurator-Fiscal of the Barony of Gorbals, *against* JAMES MACARTHUR and JAMES STEVENSON.

JURISDICTION.

I. Competency of Court of Session to review the sentence of an inferior judge in a civil libel.

II. Jurisdiction of the Bailie of the Barony of Gorbals to try it, in the first instance, in a summary way, without a jury, or strict conformity to the forms ordinary in criminal proceedings.

[*Faculty Collection, VII.* 154; *Dict.*, 7381.]

KENNET. Practice authorises the bringing such cases before the Court of Session: the protestation admitted before the Circuit Court only ends the appeal, but it does not prevent suspension. As to the jurisdiction of the bailie of the Gorbals, it seems reserved in the Act 20. Geo. II.

COVINGTON. There must be some bounds to the jurisdiction of this Court. The libel here went very far in the shape of a *criminal*, not a *civil* action. Had the case gone before the Court of Justiciary, it would have sustained the jurisdiction of the Bailie of Gorbals, on account of possession, without inquiring as to right. I also think that the proceedings here were too summary.

COALSTON. I doubt of the legality of trying any crime without a jury; but practice has gone the other way: a judge, however, ought always to give the pannel full time for proponing his defences. With regard to the jurisdiction of this Court, I think it is high time that a line should be exactly drawn between the civil and the criminal court.

HAILES. If your Lordships incline to abolish that consuetudinary jurisdiction which the Court of Session has exercised in matters like the present, I would move for memorials, or a hearing, before so great a change is made; for nothing can be better established in practice than such jurisdiction of the Court of Session. I remember a case from Paisley, where the inferior judge tried a woman for reset of theft, ordered her to be drummed out of the town, and banished her out of the territory without a jury: the cause was brought here, and the question of a jury trial, and of the jurisdiction of this Court was fully argued, and yet the judgment was affirmed. There is another case concerning the stealing of a bee-hive. Several cases are mentioned in the Collection of Decisions, and there are others not mentioned in them, so that there can be no doubt of the Court having frequently and deliberately determined the point: but I think that the proceedings here were too precipitate. The defenders had objections to some of the witnesses: they were not allowed time to prove their objections: some of their neighbours swore to their being disturbed by the noise in the defenders' house: the defenders were not allowed time to show that those neighbours had malice, or to prove, by other neighbours, that the house was of good fame; but the whole cause, libel, relevancy, proof, and sentence, was carried through at one sitting.

GARDENSTON. This is not a question as to crimes, but as to police and good order. There are many examples of the Court of Session judging in such matters. There was great expediency, and even necessity for this, and it was introduced by the prudence and wisdom of the Court. If we were to reduce every thing to the original principles of rectitude, we would make alterations great indeed, but much to the worse. If this practice of the Court is to be altered, it ought not to be altered on *a Saturday's view* of the cause. Our neighbours in England are as jealous of liberty as we can be, but they do not insist on such niceties of form. Inferior magistrates ought to proceed summarily; if they do wrong they may be corrected by the deliberate judgment of this Court.

KAIMES. The Magistrates of Edinburgh daily storm bawdy-houses, and no objection is ever made. They are the best judges in matters of police. Nothing disturbs the police of a town so much as bawdy-houses. This Court attends to nothing which regards life or corporal punishment: all other things fall within its jurisdiction.

AUCHINLECK. The city of Glasgow would be in a miserable state if there was no jurisdiction in the suburbs of Gorbals: *interest reipublicæ* that such offenders should be summarily tried. If we insist on strict form, there will be nothing effectual done.

The first question was as to the jurisdiction of the Bailie of the Gorbals. As to it the Court was *unanimously* of opinion for sustaining the jurisdiction.

The second question was as to the jurisdiction of this Court. The Court found itself competent. *Diss.* Coalston, Covington.

The third question respected the mode of procedure; and that also the Court found to be sufficiently regular. *Diss.* Coalston, Covington, Hailes.

On the 16th December 1775, "the Lords refused the bill;" adhering to Lord Kennet's interlocutor.

For the Charger, Ilay Campbell. *Alt.* A. Crosbie.

1775. *December* 19. JOHN, ROBERT, and DAVID SCOTLANDS *against* MR JAMES THOMSON.

DELINQUENCY—REPARATION.

Limits of liberty of the Pulpit, with regard to censure.

[*Fac. Col. VII.* 277; *Dict., App.* 1, *Delinquency, No.* 3.]

HAILES. The liberty of the press and the liberty of the pulpit are equally sacred. Liberty of speech in common conversation is as sacred as either. A man may print or utter from the pulpit whatever he may say in common conversation. If his words would not be actionable when uttered in common conversation, neither will they when published from the press or from the pulpit