

No 12.

1605. June 21. CONSTABLE of DUNDEE *against* FLESCHEOUR.

THE Constable of Dundee younger having found caution of lawburrows to David Flescheour in Dundee, the said David pursued him for contravention, in so far as after the act and charge of lawburrows, he came to the said David, standing upon the side of High Street with Mr Andrew Lamb, and the said young Constable being accompanied with ten or twelve of his accomplices, took the hat off his head, crushed it under his feet, and tramped upon it; and menacing the said David, said, that if he, or the others of this town, took not off their hats to him, he should nail it with a whinger to his head.—It was *alleged*, That the summons was not relevant, because the defender was only acted and obliged, that the pursuer should be harmless and skaitless in his body and goods; and true it was, that he had neither harmed his body, or done skait to his goods.—It was *replied*, That the defender was bound that the pursuer should be untroubled or molested, directly or indirectly, otherwise than by order of law; and the defender had troubled, wronged, and dishonoured him, both in his person and goods.—Notwithstanding whereof the LORDS found the summons irrelevant, and assoilzied from the same.

*Fol. Dic. v. 1. p. 533. Haddington, MS. No 838.*

---

1607. February 6. SOMERVILLE *against* —.

No 13.  
Reconciliation found not to take away action of contravention, but that the party may pursue for an injury done, even before the reconciliation.

JOHN SOMERVILLE of Torbreks pursued — for contravention of lawburrows, for violently putting of hand, and striking of the pursuer's wife and servants.—It was *excepted*, That John Somerville could have no action for contravention upon the said fact; because, since the committing thereof, the pursuer and defender were reconciled, whereby the said injury being remitted, the pursuer could never thereafter crave any reparation or amends for the same, or pursue action thereupon, *quia injuriæ temporis lapsu, et dissimulatione tolluntur, multo magis expresso reconciliatione et remissione*.—To this was *answered*, If a reconciliation was, the same proceeded upon the express command and desire of the minister of the parish, where both the parties dwelt at the very instant time when they were going to the communion, whereby, albeit the feud and quarrel was removed, yet the civil action was not taken away, unless he had renounced *per expressum*, which was neither done nor alleged; and it is of truth, that actions of contravention are competent upon many facts that are not grounds of quarrel, and among persons that are not at feud; and seeing the action was intended before the said alleged reconciliation, the same cannot take away the pursuer's action, and far less the King's interest, to whom right is acquired by the fact of the contravention, which, after the action is once intended, can never be taken away from the King's Majesty by any transaction, agreement, or