

## DIVISION III.

## Prevention in Cumulative Jurisdictions.

1622. January 30. The STEWART of MERSE against WESTNISEET.

In a competition betwixt the King's vassal, though no baron, and the Stewart of the stewardry, both having outlawed a person for a bloodwit, the LORDS preferred the King's vassal, in respect of his prevention.

*Fol. Dic. v. 1. p. 494. Duric.*

\* \* This case is No 16. p. 7299.

No 31.

1672. November 9. SCOT against RIDDEL.

JAMES RIDDEL having beaten David Scot in Rutherglen, the said James went the next day to the Magistrates of Rutherglen, and enacted himself to answer as law will; but thereafter David Scot pursued him before the Sheriff of Lanark, and obtained decret for L. 50 for a blood to the fiscal, and L. 50 to the party. Riddel suspends on this reason, that the quantities were exorbitant, and that the Sheriff and Magistrates of the burgh having at most but a cumulative jurisdiction, *est locus preventionis*, and the matter being first brought before the Magistrates, they used the first citation, and act of caution, and thereupon did appear before the Sheriff, and decline him. It was *answered*, That nothing done by the Town, or their Procurator-fiscal, could hinder him to pursue as to his own particular interest, and damage, either before the Council, Sheriff, or Bailies; and in this case Riddel himself went voluntarily and dilated himself to the Bailies, and found caution, of purpose to draw the matter there, where the Provost was his good-brother, and some of the bailies his near relations; so that as to the L. 50 decerned for his damage, there can be no question; and as to the L. 50 due to the Fiscal for the blood, albeit the Town had first cited and taken caution; yet that does not infer prevention, if they did not insist, and use diligence for sentence; for it is the public interest that crimes be punished; and where there is a cumulative jurisdiction, when one judge will not proceed, another may; and therefore a simple citation is not sufficient; but the Bailies were *in mora et supina negligentia*, neither did the Sheriff use any precipitation, for the Bailies taking caution was in the beginning of October, and the Sheriff's decret was not till the end of December. It was *replied*, That prevention was

No 32.

Jurisdiction of a sheriff and bailies of burgh, being cumulative where prevention prefers as to fines, the first citation is not sufficient, unless it be followed by competent diligence to a sentence.

Though the procurator-fiscal of one court has attached the criminal by prevention, that hinders not the private party to apply to another court for reparation.