

*** In the case December 1769, Earl of Eglinton against Campbell, Mungo Campbell being indicted before the Court of Justiciary for murder committed on the sea-shore, objected, that the Court of Justiciary had no jurisdiction for the alleged crime, being committed within the flood mark, the trial of it belonged exclusively to the Court of Admiralty. But all the Judges except one were of opinion, that the Court had a jurisdiction in this case.

No 250.

M'Laurin's Criminal Cases, p. 508.

DIVISION VII.

Baron Court.

S E C T. I.

Jurisdiction in civilibus.

1570. November 24. ALLASTER KID against THOMAS HALIBURTON.

No 251.

ANE Baron, in his awin court, may liquidate the prices of his fermis, aucht and to him be his tenentis, and may poind and apprise the tenentis gudis or geir thairfoir, gif he refusis or delayis to mak payment of the samin.

Fol. Dic. v. I. p. 503. Balfour, (BARON COURT.) No II. p. 41.

1632. November 29. L. HADDO against JOHNSTON.

L. HADDO having convened Johnston his own tenant in his own court, before his own Bailie, to hear it be tried, that he had done wrong the time when he was tenant of his lands of ———, in riving out the greens and swairds of the said lands, and thereby had damnified the said pursuer his master in great sums of money libelled; and whereupon decret was given in his own Baron-court against the tenant, for the sum of 600 merks; letters conform being

No 252.
The Lords turned a baron's decree into a libel, though given against his

No 252.
own tenants,
but it was for
a great sum
of damages
for the te-
nant deteri-
orating the
land.

sought to this decret, the defender alleging the same to be null, being given by himself in his own Baron-court, he being both judge and party in effect, seeing he was pursuer, and his own Bailie Judge, and the probation behoved to be either by his own men and tenants, who could not be witnesses, being his tenants, or else by others dwelling on other men's lands, and he had no jurisdiction to cause them who are *extra territorium*, to compare to be witnesses in his court, and if they did, they were the more suspect; and it was a novelty that any Baron in his own court should pursue, and be judge to a declarator of this nature, and of this consequence, to take sentence to himself therein; but it was only proper to have cognosced, tried, and decided in a sovereign judgment before the Lords of Session; and the pursuer *replying*, That the Baron-bailie was a competent judge to decide in this cause, for wrong done by his tenant, far more than when he is judge in actions for breaking of arrestments, which he may lawfully judge upon; THE LORDS, in respect of the allegiance foresaid, proponed against the decret, which they found to be very considerable, annulled the sentence (the same was given *parte absente*) and reponed the party, to dispute against the same as if it had never been given; and ordained the defender in this judgment before the Lords, to answer to the deeds contained in that libel, sicklike as he might have done *ab initio*, if he had been pursued here before the Lords.

1633. February 6.—L. HADDO pursues one Johnston, who was his tenant in the lands of Park of Kellie, to refund to him the damage sustained by the said defender's undutiful and unusual labouring of the said lands before he removed off the lands, and after he was warned to remove therefrom, through the riving and tilling of the greens and swairds of the said lands, which were not laboured in time preceding, but were ay kept for the grass and pasturage of the bestial, wherewith that roun was laboured, and for burning of the mosses of the said lands, which were ever reserved for feuel, and for casting of peats to the tenants thereof, whereby the roun was deteriorated in the quantity and sums libelled, which were acclaimed by the pursuer, seeing he alleged, that thereby no tenant might pay the old accustomed duty for the land; and the defender alleging, that this kind of action was a novelty, and not usually heard of before, and so ought not to be sustained, seeing it is lawful to any tenant to labour the land set to him in all the parts thereof, where he is not restrained nor limited by any special condition, betwixt the master and him, as he was not in this case, and that he laboured but conform to the use of the whole country; THE LORDS repelled the allegiance, and sustained the action; for they found that no tenant, albeit no such condition had been specially made, might by his labouring rive out the old swairds of ground, nor yet burn the mosses, whereby the mosses might be made worse, but that the roun should be left by the tenant, as good when he removed therefrom as the time he entered thereto; and therefore they ordained the fact libelled and the estate of the roun to be

tried by gentlemen in the country, who might both consider of the case where-
in the room was at the tenant's entry, and of the facts done by him, before his
removing therefrom, and of the quantity thereof, and of any damage the pur-
suer has incurred thereby, against the ordinary form usually kept in that part
of the country, in labouring of such rooms, and what, in their judgment, the
said skaith would extend to, and to report the same thereafter to the Lords, after
which they declared they would determine upon the quantity of the skaith,
the modification whereof they reserved to themselves, after consideration of the
said report and trial taken. See TACK.

Act. Baird.

Alt. Mowat.

Clerk, Gibson.

Fol. Dic. v. 1. p. 503. Durie, p. 653. & 669.

No 252.

1674. February 3. LAIRD OF STROWAN against CAMERON.

THE LAIRD of Strowan having taken decreet against Sorlie Cameron his own
tenant, in his own Court, for green wood, fish, and other penal statutes, and
having fined him for killing of caperkaillies, and for not presenting a cottar of
his, for whom he became caution by an act of Court; he suspends on these
reasons, that the penalties were exorbitant above the act of Parliament, and
that a Baron could not fine for the penal statutes which belonged to the King,
and should be pursued in the King's court, that the penalties might be appli-
cable to his Majesty. It was answered, That Barons may proceed to capital
punishment, which is much more than the penal statutes, and *de consuetudine*,
time out of mind, determine in penal statutes.

THE LORDS found the allegiance relevant.

The suspender further *alleged* upon the act and proclamation; discharging
penal statutes. It was answered, That that act could not be extended to Ba-
rons, having right *privato jure*. *2do*, It could not extend to the penal statutes
decerned before the act.

THE LORDS found that it did extend to all penal statutes, unless they had tak-
en effect by payment or execution before the act, but found that an act of the
Baron court, not subscribed by the cautioner, albeit subscribed by the Judge
and clerk, could not prove against him, albeit he could not subscribe, seeing
the clerk subscribed not by his warrant. See PROOF.

Fol. Dic. v. 1. p. 503. Stair, v. 2. p. 261.

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Baron courts
competent to
judge in pro-
cesses for
cutting wood,
fishing in
close time,
and other
such delects
arising out of
penal sta-
tutes.

1674. June 18. WALKER against BROWN.

A PROPRIETOR who has a right of holding courts may pursue before his own
Bailie for teinds to which he has a right, which was found, though the lands
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