

No 32. always understood by the first citation, after which that Judge having right to the fine, might discharge the same.

THE LORDS found the letters orderly proceeded, and that prevention by citation was not sufficient, if the Judge did not use diligence to bring it to a sentence; and here there was yet no sentence by the Bailies, nor precipitation by the Sheriff, but found the party as to his own interest might chuse his own judge.

*Fol. Dic. v. 1. p. 494. Stair, v. 2. p. 115.*

\* \* \* Gosford reports this case.

In a suspension of a decret given by the sheriff of Lanark, fining James Riddell in the sum of L. 50 to David Scot, as the party injured, and L. 50 to the procurator fiscal, upon this reason, That the present provost of Rutherglen, or Ruglane, had prevented the sheriff by making the committer of the violence find caution to answer as law will, and giving warrant to cite witnesses; likeas, when the sheriff caused cite the party before him, intimation was made of the procedure of the town court, which put the sheriff in *mala fide* to proceed; seeing in our law, where there are two several judges competent for one crime, such as a baron, sheriff, or magistrates of burghs royal, the first attacher, as having right by prevention, is the only judge competent; it was *answered*, That the party injured having his option to pursue before any judge competent, for reparation, the procedure of any other without his complaint cannot debar him to pursue before another judge. And in this case, the said David Scot having never made application to the magistrates of Ruglane, but at first having intented this Adam before the sheriff, who had proceeded to give sentence, he ought to have the benefit thereof, and his decret take effect. THE LORDS did find the letters orderly proceeded, and that not only as to the party injured his interest, but likewise to the fine decerned to be paid to the procurator fiscal, upon this reason, that the magistrates of burgh, albeit they had first attached, yet it was only *pro more*, but did not proceed to examine witnesses, and give sentence, which might safely have been done; and if a naked citation were sustained, it would be a great hinderance of punishing malefactors, and preserving the peace of the kingdom.

*Gosford, MS. No 517. p. 274.*

No 33.  
A procurator fiscal may pursue for an injury without concurrence of the

1673. July 1. JOHN FORK, Notary, against WILLIAM FYFE.

THERE being an advocation of a pursuit before the commissary of Glasgow at Fork's instance for an injury and scandal done to him by Fyfe, in calling him a perjured man, by which he had suffered great prejudice in his calling

and reputation, in which pursuit, Fyfe having proponed as a most relevant defence, viz. that it was *res hactenus judicata*, in so far as the bailies of Paisley had cognosced thereupon in an action pursued at the procurator fiscal's instance, where it was found, that the said perjury was truly proved, and that he was assolizied; it was answered, that that pursuit was *res inter alios acta*, Ferk not being pursuer, but on the contrary, compearing and disclaiming the pursuit, and therefore might lawfully pursue before the commissary for his own interest, whereupon the procurator fiscal did pursue without his concurrence. THE LORDS did remit the cause to the commissary of Glasgow, and found, that there was no iniquity committed, seeing where two several judges are competent to a crime, the party injured refusing to concur might make choice of his own judge for reparation of his own damage sustained, which was most proper to the commissary court, and that the procurator fiscal of another court might concur with the party complained upon, or otherwise having no interest but to pursue for a fine upon the public account, could not hinder the party injured to seek reparation before another judge competent.

*Gosford, MS. No 607. p. 348.*

No 33.  
party injured;  
and if that  
party disclaim  
the action,  
altho' decree  
be given, that  
will not hinder  
the party  
injured from  
pursuing be-  
fore any other  
competent  
judge.  
See Scot a-  
gainst Rid-  
dell, No 31.  
P. 7315.

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#### DIVISION IV.

### Jurisdiction of the Court of Session.

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#### SECT. I.

To what Causes this Jurisdiction extends.

1497. November 10. PATRICK COCKBURN against ALEXANDER RAMSAY.

No 34.

ALL clamis, contraversies, and questiounis concerning purpresture, aucht and sould be decydit and determinat be deliverance of ane inquest, takin be command of our soverane Lord's letteris, befor the Justice-general, or his deputis: And gif ony sic action be intentit befor the Lordis of Counsal, thay aucht and sould remit the samin to the said Justice; because the samin pertenis to him allanerlie.

*Fol. Dic. v. 1. p. 495. Balfour, (PURPRESTURE) No 5. p. 443.*