

therefore falls under the words of the statute. He has taken something by the service, namely the superiority which was in Agnes Binnie. I would not, at any rate, allow him to take advantage of literal criticisms, in order to disappoint the creditors of his father.

KAIMES. If he takes any thing by the service, he will be liable in so far. With regard to property, the infestment is nothing.

GARDENSTON. The words of the statute are quite general, though Lord Bankton has limited them in his commentary, erroneously, as I think.

PRESIDENT. How can the defender object to his own title? He does not seek to reduce it. Were he insisting in a removing against tenants, the title would be good: he cannot therefore be allowed to plead that the title is null as to creditors.

On the 17th January 1775, The Lords found the defender liable; adhering to Lord Kennet's interlocutor.

*Act.* ———. *Alt.* A. Wight.

1775. January 18. JAMES WILSON *against* JAMES JACKSON.

#### USURY.

How and before what Court competent to be tried: If triable without a jury, and at the instance of the procurator-fiscal alone, in case the private party disclaims the process.

[*Faculty Collection*, VII. 14; *Dictionary*, 16,433.]

GARDENSTON. If such petty usuries might not be tried by the Sheriff, it would be a great encouragement to such practices, which are but too common already among the lower classes of people. As to trials by jury, I fairly own that I am none of those who can join in the cry of John Bull about juries, who thinks that his country alone is free because it has juries. In England it is the judge who directs the jury whenever they go right. I admire juries in cases of treason, and in revenue causes; for we have seen from history that bad effects arise from the want of them.

COALSTON. As to the first point, I am of the opinion given; the more especially by reason of the decision, 26th June 1766, *Mackechnie against Wallace*. As to the second, I do not like juries in civil causes, but I have ever been of opinion that it is a great and important privilege,—that of being tried by a jury in matters criminal. I am sorry to see that the line has not been well drawn of late between causes to be tried with or without a jury. I think, that in cases only inferring fine and imprisonment, or smaller punishment, there is no necessity for a jury.

PRESIDENT. I am sorry to see that the practice of exacting above the legal interest of money prevails in Paisley. The former case, in 1766, came from

Paisley, with circumstances very similar. It would be dreadful, were the civil penalties not to be exigible unless in an action before the Court of Justiciary. This would, in effect, be equal to a repeal of a law, very necessary for the lower sort of people, who are apt to offend in this way.

On the 18th January 1775, "the Lords found the usurious contract proved, and therefore decerned in the treble penalties."

*Act. Ch. Hay. Alt. G. Wallace.*

*Reporter, Auchinleck.*

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1775. January 31. THOMAS MYLNE of Mylnfield *against* The COUNTY of PERTH.

#### PUBLIC POLICE.

What damages may be awarded under the Riot Act?—on whom?—and how to be levied?

[*Faculty Collection, VII. 30; Dict. 13,180.*]

HAILES. A county is as much a *nomen juris* with us as a *shire*. Indeed it is the more proper appellation of the two, for anciently there were many shires in one county, as in the county of Perth there were the shires of Scone, Auchterarder, &c. Shire, however, is the more modern word in the law of Scotland. Since the Union we begin to use the old word of County. In the cess-laws, before the Union, an assessment is made leviabie off the *shire*; *i. e.* from the persons whose lands are valued. In this way, I would interpret the statute of Geo. I. I would hold county to mean the same thing as *shire*, in the Cess Acts before the Union, and then the indemnification may be levied along with the rogue-money. The statute says, that an edictal citation shall be sufficient, without mentioning *names and designations*. The statute meant to introduce an easy mode of citation instead of one more operose. It never could have supposed that all the *inhabitants* could have been cited by their *names and designations*. It is said that to make the *landholders* pay the whole damage, would be impolitic and unjust; because in such popular riots the landholders are not the guilty persons. I answer; let the law be impolitic and unjust, *that* is nothing to judges. If there is any error, the legislature must correct it. But I do not think so ill of the statute as so explained, for if the *landholders* give timely attention to the police of the country, they will prevent mobs from rising to such dangerous heights. Perhaps also the legislature supposed that the people in Scotland were more under the influence of the landholders than they are in England. I hope they thought rightly. If the assessment were to be made of the inhabitants of such a county as Perth, the matter would be inextricable. There would need to be an estimate what proportion the Duke of Athole and Lord Breadalbane ought to bear along with the meanest of their cottars.