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.

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 leviable 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.

COALSTON. [Reporter.]—Propose that the Justices of the Peace should settle the proportions of each parish, and then that such proportions should be rateably divided among the inhabitants or householders.

GARDENSTON. This is a wise law: it prevails in other countries, such as Holland. It plainly extends to Scotland. As to the extent of the damage, this is no new case: there is a decision of the Court, *28th June* 1743, *Straiton* against *The Magistrates of Montrose*, observed by Clerk Home, where it was found that the statute relates only to houses, not to furniture. As to the manner of laying on the damage, there is none better than that proposed by the Ordinary,—a meeting of the justices and a general assessment.

MONBODDO. It is admitted that this statute extends to Scotland. I should be sorry if it did not, for it is an excellent law. It would be strange if we should find that a statute, which expressly extends to Scotland, cannot be executed *there*. I do not think that the pursuer can have execution against one or two of the heritors; *that* is, on the plan of the *English* part of the statute: but the *Scots* part says the direct contrary.

JUSTICE-CLERK. This is a very important statute: the first part of the Act respects the security of Government, and all Magistrates are authorised to interpose. In the *second* part, with which we are concerned, the power is delegated to certain Magistrates: when a mob deviates from the original purpose of its insurrection, and assaults the property of individuals, the law has wisely devised a remedy; it is by making the whole county liable in the damages: by this, every man who joins in a riot must know that he and his neighbours and friends must pay for the damage which he has done. I am sorry that there is a decision limiting the damage to the desolation of the house: it proceeds on a narrow interpretation of the statute. If the furniture should be damaged in the course of demolishing the house, I should still think that reparation was due. As to the mode of levying, I cannot suggest a better rule than that proposed by the Ordinary.

AUCHINLECK. This is certainly a most political and wise law. I would not go the length of finding damages due on account of furniture destroyed. My difficulty is this: when innocent people are to be subjected in damages from motives of political utility, we have no powers to extend the penalties further than the law has done. I approve of the method of assessment proposed by the Lord Reporter.

PITFOUR. This statute was not always so popular as it now appears to be. I always thought it to be a salutary law. The manner of levying the damage was judiciously invented, by making it fall on the country at large. I should be sorry to see it found that this statute does not extend to Scotland. The *first* question is as to furniture:—From precedents, as well as private opinion, I think that it does not extend to furniture: it was so determined in the case of *Straiton*, as also in the case of *Mowat*, *June* 1761. These decisions are agreeable to law; because a penal statute, introducing new punishments, or a new mode of making damages good, cannot be extended *de casu in casum*: the words of one part of the statute must be made to quadrate to the words of the other part. What could be the meaning of making the destruction of the furniture not to be felony under the statute? As I cannot extend the *crime* as to furniture, so neither can I as to *damages*. The meaning of the

statute was to prevent an evil then beginning to arise. The common law had already subjected personal offenders to damages: if furniture were included, there would be a hurt instead of an advantage to the party suffering; for, by the statute, there is a short prescription of two months introduced. As to the mode of levying the damages, they are leviable on the county in general, *i. e.* on the inhabitants. Inhabitants are liable in England, and the purpose of the law was to bring the two parts of the kingdom under the same regulations. The only method of carrying the law into execution, is by levying on the county. The inhabitants of boroughs are not liable. *Boroughs* and shire are contradistinguished by the statute.

On the 31st January 1775, "The Lords found the pursuer entitled to damages arising from the demolition of his house, but not for damages arising from the destroying of his furniture; and remitted to the Justices of Peace to assess the different parishes, and to proportion such assessment among the present inhabitants and indwellers."

Act. A. Crosbie. *Alt.* H. Dundas.

Reporter, Coalston.

N.B.—The Court was almost unanimously of Lord Coalston's opinion as to the mode of assessment. I still think that the mode is inextricable, and that the parties concerned will at length have recourse to the valued rent, which, however unequal, is an intelligible rule for proportioning the damages: the rule established will create an expense equal to the subject in controversy.

1775. *February* 2. ANDREW and ROBERT LOOKUPS, *Petitioners.*

THE petitioners, having heard of the death of one John Lookup in Virginia, desired to have evidence of their propinquity to him. The first point to be established was, *who* is the John Lookup? The petitioners imagined that he was Mr John Lookup, advocate, and that his identity might be proved by comparing his handwriting with the handwriting of the Virginia John Lookup. With that view, they applied to the Court for a warrant to deliver up on receipt, and under an obligation to restore, certain writings of Mr John Lookup, advocate, which lay in a process before the Court of Session.

On the 2d February 1775, "The Lords granted the desire of the petition, on finding caution for L.5, and ordered notarial copies to be taken before the clerk delivers up the writings."

For Petitioners, A. Ogilvy.