

THE COURT thought the circumstance of the name of the procurator fiscal appearing *pro forma* in this libel immaterial, the conclusions being only *ad civilem effectum*, and the libel itself bore a reference to the oath of party; and, as the case now stood, there was no form in which relief could be obtained from the supreme criminal court; therefore,

No 135.

THE LORDS 'altered the Ordinary's interlocutor, and repelled the objection to the competency of this Court.'

Act. Dean of Faculty. Alt. Crosbie. Clerk, Tait.
Fol. Dic. v. 3. p. 346. Fac. Col. No 144. p. 377.

1778. July 14. ALEXANDER MAIR *against* JAMES SHAND.

No 136.

MAIR brought an action against Shand for a battery on his person, concluding for damages, and L. 50 as a *solatium* for wounds and bruises he had sustained.

The Court sustained its competency to an action on a battery, *ad civilem effectum*, in the first instance.

Shand *objected* to the competency of the Court.—When the Sheriff, who has a proper criminal jurisdiction in riots and batteries, awards only a fine, the Court may review the sentence, because the matter then becomes properly civil.—But the Court have no jurisdiction to try these delicts in the first instance; Erskine, B. 1. t. 3. § 21.; Alvis *contra* Maxwell, 4th March 1707, Fountainhall, No 113. p. 7403.

The present action is not merely *rei persecutoria*, for the expense of curing wounds. A large sum, *in solatium*, is demanded. The Court, therefore, is required to inflict a penalty on account of a crime.

Answered for the pursuers; The Court is competent to every action brought *ad civilem effectum*, though founded on facts of a criminal nature, as in assythment for murder, reparation for damages done by theft, robbery, and damages by a battery, as well as any other injury.

The authorities founded on apply only to the case where the action is brought *ad vindictam publicam*, and for punishment; but the competency of the Court to an action *ad civilem effectum*, is laid down by Erskine, B. 1. t. 3.; and Bankton, B. 4. t. 7. p. 29.

The conclusion for a *solatium* is entirely of a civil nature, being only in reparation of the injury to the private party.

THE COURT 'found the action competent before this Court.'

Act. Erskine. Alt. Hay.
Fol. Dic. v. 3. p. 346. Fac. Col. No 32. p. 53.