

No 12. it may be remarked, from the informalities objected to in the libel, was found to be ineffectual.

Counsel for the Crown, *Solicitor-General, I Campbell, et alii.*

For the Prisoners, *H. Erskine, et Honyman.*

S.

*Fac. Col. (APPENDIX.) No 4. p. 7.*

1783. *March 19.*

WILLIAM BROWN and Others *against* The PROCURATOR-FISCAL of the Sheriff-Court of Edinbrgh.

No 13.  
Jury trial indispensable where the higher crimes are charged, tho' inferior punishments be libelled.

WILLIAM BROWN and others were indicted before the Sheriff-depute of Edinburgh, for assaulting, wounding, and intending to murder certain persons in the streets of that city, and for masterful theft of some of their wearing apparel; the libel concluding for the same corporal punishment as those specified in the foregoing report. In this case, likewise, sentence was pronounced without the interposition of a jury, and the prisoners appealed to the High Court of Justiciary.

But here the COURT, considering the crime charged to be of a higher nature than that which occurred in the former instance, though the punishments sought by the prosecutor in both were equal, unanimously determined, agreeably to the judgment pronounced on the case of Leonardo Piscatori, 17th January 1771, that the trial by jury was indispensable.

S.

*Fac. Col. (APPENDIX.) No 5. p. 8.*

1793. *May 17.*

MARQUIS of ABERCORN *against* The MAGISTRATES of EDINBURGH.

WILLIAM LAING had possessed the Duddingston mills, on a lease from the Marquis of Abercorn, since Whitsunday 1786.

The water which supplies these mills is chiefly drawn from Braidsburn, of which the magistrates of Edinburgh, acting under the statute 25 Geo. III. c. 28, for supplying that city with water, had appropriated some of the most considerable sources.

Laing in consequence brought an action of damages against the Marquis of Abercorn, the competency of which a final interlocutor of the Lord Ordinary had sustained.

The Marquis of Abercorn had by this time brought an action of relief against the Magistrates of Edinburgh, who objected to its competency, and

*Pleaded*; By 25th Geo. III. c. 28. § 43. the Magistrates are authorised to enter into agreement 'with the owners or proprietors of all springs or fountains,

No 14.  
The jury named by a statute for determining the value of property to be taken for a public purpose, are not competent to determine cases of consequential damage.

‘ within four statute miles from the fountain-head or reservoir where the springs now brought into the city are collected,’ for the privilege of bringing water by pipes into the city. And by § 44. it is provided, that wherever the matter cannot be amicably settled with the ‘ owners, proprietors, or *occupiers* of such ‘ springs, or of the lands through which it may be necessary to lay the said ‘ pipes,’ the indemnification to be given them shall be settled by a jury named in terms of the act, whose verdict shall be final and conclusive. The Marquis, if not an owner or proprietor of the springs, is at least an *occupier* of the water intercepted, and his claim must be determined by the jury.

*Answered*; Any statute which alters the ordinary course of law, must be strictly interpreted. This statute applies only to the direct damage sustained by the owners, proprietors, or occupiers of springs, or by those through whose grounds the pipes are carried, and not to the consequential loss which may arise to inferior heritors. This claim is therefore cognizable in the ordinary courts, and in course of the ordinary process of law; and if the pursuer’s action of relief were sent to a jury, and a different court from his tenant’s action of damages, that court and jury might not give him relief equal to the damages awarded against him in this Court.

THE LORD ORDINARY reported the cause on informations.

THE COURT differed in opinion on this question. Some Judges thought this case came under the act; but a majority were of opinion, that whatever the purpose of the Legislature might have been, yet the words of the statute were not such as clearly reached the present case of consequential damage, and that the jurisdiction of the ordinary courts of law was not to be excluded by implication.

THE LORDS ‘repelled the objection to the competency of the action.’

Lord Reporter, *Henderland.* Act. *Elphinston.* Alt. *M’Cormick.* Clerk, *Gordon.*  
D. D. *Fac. Col. No 54. p. 113.*