

DIVISION III.

Prevention in Cumulative Jurisdictions.

1622. January 30. The STEWART of MERSE against WESTNISEET.

In a competition betwixt the King's vassal, though no baron, and the Stewart of the stewardry, both having outlawed a person for a bloodwit, the LORDS preferred the King's vassal, in respect of his prevention.

Fol. Dic. v. 1. p. 494. Duric.

* * This case is No 16. p. 7299.

No 31.

1672. November 9. SCOT against RIDDEL.

JAMES RIDDEL having beaten David Scot in Rutherglen, the said James went the next day to the Magistrates of Rutherglen, and enacted himself to answer as law will; but thereafter David Scot pursued him before the Sheriff of Lanark, and obtained decret for L. 50 for a blood to the fiscal, and L. 50 to the party. Riddel suspends on this reason, that the quantities were exorbitant, and that the Sheriff and Magistrates of the burgh having at most but a cumulative jurisdiction, *est locus preventionis*, and the matter being first brought before the Magistrates, they used the first citation, and act of caution, and thereupon did appear before the Sheriff, and decline him. It was *answered*, That nothing done by the Town, or their Procurator-fiscal, could hinder him to pursue as to his own particular interest, and damage, either before the Council, Sheriff, or Bailies; and in this case Riddel himself went voluntarily and dilated himself to the Bailies, and found caution, of purpose to draw the matter there, where the Provost was his good-brother, and some of the bailies his near relations; so that as to the L. 50 decerned for his damage, there can be no question; and as to the L. 50 due to the Fiscal for the blood, albeit the Town had first cited and taken caution; yet that does not infer prevention, if they did not insist, and use diligence for sentence; for it is the public interest that crimes be punished; and where there is a cumulative jurisdiction, when one judge will not proceed, another may; and therefore a simple citation is not sufficient; but the Bailies were *in mora et supina negligentia*, neither did the Sheriff use any precipitation, for the Bailies taking caution was in the beginning of October, and the Sheriff's decret was not till the end of December. It was *replied*, That prevention was

No 32.

Jurisdiction of a sheriff and bailies of burgh, being cumulative where prevention prefers as to fines, the first citation is not sufficient, unless it be followed by competent diligence to a sentence.

Though the procurator-fiscal of one court has attached the criminal by prevention, that hinders not the private party to apply to another court for reparation.

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