

1778. July 18. ALEXANDER MAIR *against* JAMES SHAND.

JURISDICTION.

Competency of the Court of Session to an action on a battery, *ad civilem effectum*, in the first instance.

[*Faculty Collection, VIII. 53 ; Dict. 7421.*]

HAILES. The defender says that this is of the nature of a criminal libel, because it is in the form of a syllogism : but all libels, whether civil or criminal, are, or ought to be in the form of a syllogism. The libel before us is altogether civil ; for there is neither instance nor concurrence of a public prosecutor. A conclusion for damages is civil, and independent of a conclusion for punishment. The fact, in different lights, may be tried in a Court having criminal jurisdiction, in the first instance, and in a civil court, which has not such jurisdiction.

BRAXFIELD. There may be a claim for damages in this Court, although a civil court ; for an action arising *ex delicto*, may, in its nature, be only *rei persecutoria*. A man who burns my house may be hanged, and yet I may bring a civil action against him for reparation.

ELLIOCK. I thought that here there was a drunken idle squabble, not fit for the cognisance of this Court.

JUSTICE-CLERK. If the pursuer is unreasonable, and brings an action before this Court without sufficient cause, he may be censured for his litigiousness ; but still the action seems to be competent. It matters not that there is a conclusion for *solatium* : that will, in the end, be found to be only another name for damages. I am informed, that, in 1763, the Lords sustained their jurisdiction in a similar cause from Irvine.

On the 18th July 1778, "The Lords sustained action ;" altering Lord Elliock's interlocutor.

*Act.* Henry Erskine. *Alt.* Charles Hay.

1778. July 3, and 22. JAMES SELLARS *against* NINIAN ANDERSON.

LAWBURROWS.

After application for letters of lawburrows, and oath that he dreads bodily harm, the person who applies is not bound to specify the facts on which his application proceeded.

[*Fac. Coll. VIII. 44 ; Dict. 8042.*]

HAILES. The defender has argued at great length from the analogy between the law of England and Scotland. He argues well as to a presumed analogy between the ancient laws of the two countries ; for anciently there was such a