awarded by the Court; and if they awarded no expense of process, either because none were sought or none were given, a decree for the penalty could only carry the expense of putting it into execution. So found, 23d December 1757, *Allan* against *Young*. This decision held to be law, and approved of in the case, 16th July 1779, *Montgomerie Beaumont* against *Thomson and Alexander*.

Again, 27th November 1761, *Gordon* against *Maitland;* also, 4th January 1740, *Cowper* against *Stewart;* observed by Kilk., p. 375.

The case is different in adjudications: there the expense of process is recovered out of the penalty, even in cases where the penalty is restricted to necessary expenses.

The Lords were of this opinion, August 1774, *Henry Davidson* against *Sir Hector M'Kenzie*.

1764. *June* 23. GEORGE M'KAY *against* MUNRO of NEWMORE.

IN the process of proving the tenor, George M'Kay, Esq. against Munro of Newmore; the Lords finding it proven that Newmore had wilfully abstracted a sheet of a tailyie, of which the tenor was sought to be proven; they fined him in L. 20 to the poor, and found him liable in the expenses of process.

See B. Sederunt, 16th December 1761, *Harrison* v. *Wilson*.

1774. *July* 14. HARRISON *against* WILSON.

HARRISON, in an action before the Sheriff of Dumfries, obtained decreet against Wilson. Of this decreet, Wilson presented a bill of suspension, which at last was refused; but, in obtaining this refusal, Harrison was put to an expense of L. 7 : 17 : 6.

For this sum, he brought a process against Wilson before the Sheriff of Dumfries, in which the Sheriff pronounced this interlocutor, (4th March 1773):— "Finds the libel relevant, and that the pursuer has a just title to insist for repetition of the expenses libelled; as, otherways, a rich litigious debtor might expose a poor creditor to expenses exceeding the amount of his just debt."

The defence pleaded for Wilson was, that, as the Court of Session had decreed no expenses to Harrison, it was not competent for him to ask them in a subsidiary action before the Sheriff. But this plea was absurd. The Court of Session, in passing or refusing a bill of suspension, by their forms, are precluded from giving expenses; and, therefore, their not giving them could afford no defence in the present action before the Sheriff. For although it is a general rule that one cannot ask expenses by a subsidiary action, yet this only holds in cases where the Judge has it in his power to give expenses, but gives them not, either because they are not sought, or that he thinks them not to be due. But where he is precluded from giving them, merely by form, it is competent to ask them by a subsidiary action.

And therefore, in a suspension of this decreet, the Lords laid no weight upon the reason of suspension: they thought the Sheriff's interlocutor well founded, (14th July 1774.) But the cause went off upon another ground, *viz.* the import of a discharge by Harrison to Wilson of the original decreet, and all following, or competent to follow thereon; under which, it was alleged by Wilson, that all claim for expenses was totally given up and discharged.

1776. *December* 14. ROBERT GRAY *against* HUGH MONRO.

AN agent, who has managed a lawsuit at the desire of several pursuers, was found to have action against any one of them for his whole claim of disbursements and pains. Dict. Vol. II, p. 385. The same holds as to an accommodation by way of composition of any law-suit, civil or criminal.

Robert Gray of Ardens against Hugh Monro, jun. of Auchanny, (16th November 1776.) In this case, a factory was granted to Mr Gray to accommodate a criminal process for a riot. He did so. The granters of the factory were found liable, severally, for the composition, without distinguishing their different interests or concerns in granting the factory. This day, 14th December, 1776, the Lords adhered.

1776. *February* 24. COUNTESS of SUTHERLAND *against* CUTHBERT.

A DECREET for expenses, in common cases, does not bind each defender *in solidum*, unless the words conjunctly and severally are added. But where two persons concur in bringing an action, upon the same *medium*, and with the same conclusion, they are liable in expenses *in solidum*, even although the words conjunctly and severally are not added. This would hold particularly in a process of ranking and sale; for it never could be pretended that one part of the process applied to one creditor, and another part to another.

1774. *January* 19. MAGISTRATES of RUGLEN *against* CULLEN.

WHEN the Lords give expenses of process, they always, in course, give the expense of extract. The clerk puts it into the interlocutor often without special authority. Upon the same footing it is, that, where, in an appeal, the House of Peers give costs, the Lords, when they apply the decree, give also the expense of the extract; 30th November 1773,—adhered to 19th January 1774. There were many other points. See this case under head of *Appeal*, p.

Query, Is this the practice in inferior courts? Why should it not?