

1774. December 16. WILLIAM KERR *against* MATTHEW HAY.

JURISDICTION.

It is competent to the Court to judge in a reduction of a sentence pronounced by an inferior Court upon a criminal charge, and awarding a pecuniary reparation, which the private prosecutors deemed inadequate to the injury sustained.

[*Fac. Coll. VI. 377; Dict. 7420.*]

PRESIDENT. This cause is a trifle in itself, but important as to its principle. There is a mixed jurisdiction in the Sheriff, in a cause merely criminal. The Sheriff is a criminal judge. But this is not a cause merely criminal, it is of a mixed nature; *sapit naturam* of a cause with civil effects. There was no jury, nor could there with propriety be. The libel was referred to oath of party, which would have been improper in a criminal cause. Suspension—advocation—reduction, were all equally competent in this case. It would be destructive of good order, could all such little squabbles be only brought before the Court of Justiciary.

MONBODDO. I should have doubted whether this cause could have been brought into this Court originally in the present shape, but I have no doubt of its competency in the form of reduction.

JUSTICE-CLERK. The Court of Justiciary has no form for trying causes of this nature.

KAIMES. If there were any doubt of the competency in practice, it ought to be removed now.

AUCHINLECK. The Court of Justiciary cannot try reductions.

HAILES. The nature of this cause will not admit of a suspension, because the defender is willing to obey the charge. It is said that advocation is the form: but why *advocation* rather than *reduction*? *Reduction* may be competent when *advocation* is not, as in maritime causes, but I did not imagine that *advocation* was competent when *reduction* was not.

On the 16th December 1774, “the Lords found the reduction competent;” altering Lord Elliock’s interlocutor.

*Act.* A. Lockhart. *Alt.* A. Crosbie.

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