

1708. February 14.

THOMSON and PROCURATOR FISCAL of Dumblane *against* WRIGHT.

ALEXANDER THOMSON carrier in Dumblane, being wounded and bled by Archibald Wright younger of Drumdowl, for neglecting his letters, and giving him ill language, as he alleged, he is convened by the Procurator Fiscal of the regality of Dumblane, and is fined upon a probation of the battery and bloodshed led in absence, in L. 30 for contumacy in not compearance, L. 50 for the bloodwit, and L. 20 for the assythment and cure; in all, extending to L. 100 Scots. Of this decret, Drumdowl raises suspension and reduction, for these reasons, *1mo*, That it was *a non suo judice*, neither the *locus delicti*, nor the *locus domicilii* being within the said regality; not the place where the delinquency was committed, for that is acknowledged to be in Stirlingshire; nor yet my dwelling, for I was then staying at Charles Row of Inverallan's house, whose apprentice I was, in his calling as a writer to the signet, and I produce the indentures, and that is not within the regality either; so the Steward of Orkney might have as well convened me for this riot as the Fiscal of Dumblane; and one so wrongously cited is not bound to compear and propone his declinator. *2do*, The baron of the ground, where it was alleged to have been committed, attached me, and judged it, and so it was *res judicata* before your citation. *3tio*, He admitted women witnesses to prove a fact done with up-sun, where there could be no penury pretended of witnesses. *4to*, If I had been obliged to compear, I would have proponed this relevant defence to exculpate, that he first gave me bad language, and then assaulted me. *Answered* for Thomson and the Procurator Fiscal, That it is confessed the delict was committed *extra territorium*, but he was liable to the jurisdiction *ratione domicilii*, he being then staying at his father's house of Drumdowl, which lies uncontrovertedly within the regality; and though he was Charles Row's apprentice, yet he was not his house-apprentice, and he had quit his employment then; and for the Baron's decret, it was mere collusion; and *esto*, women were inhabile in this case, which is denied, it is sufficiently proven by sundry men witnesses that it was a very barbarous assault. And for his exculpation, it is now out of time, and contrary to the witnesses' depositions. THE LORDS found *locus delicti* was clearly without the jurisdiction, and that his residence at the time appeared to be with Charles Row at Inverallan, which was likewise without the regality; and so found the decret given *a non suo judice*, and turned it into a libel; but were of the mind, that if he succumbed in proving previous provocations, the riot deserved a much severer censure than what the bailie of the regality had inflicted; only they thought his procedure illegal, not only as incompetent, but likewise that he both fined for contumacy in not appearing, but likewise cognosced the crime, and fined for it also: whereas he ought to have followed one

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An inferior Judge having both fined a person accused of a riot for contumacy in not compearing, and likewise cognosced the crime, and fined for that also; the Lords found the procedure illegal, because he ought to have followed one of these methods, and not to have used both.

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of these methods, and not have used both. I find that of old, such riots and batteries, where there followed blood, were remitted to the knowledge of an assize, as in other criminals is still done; but it is now generally gone into desuetude, and the inferior courts judge both relevancy and probation, without an inquest.

*Fol. Dic. v. 1. p. 186. Fountainball, v. 2. p. 431.*

*See APPENDIX.*