

and improbation before them, especially in this case, where the accession of the party who employed the messenger was not so pregnant, if *bona fide* he had made use thereof as being ignorant of the falsehood ; they did remit it to some of their own number who were upon the Criminal Court to consider the same, as upon their judgment such a trial might be taken as they might find just and reasonable.

No 202.

Gosford, MS. No 947. p. 625.

1725. February 11.

JOHN GREIG, Journeyman Wright in Edinburgh, *against* The MAGISTRATES of Haddington.

JOHN GREIG being fined by the Magistrates of Haddington for an irregular marriage with Elizabeth Calderwood a burghess of that burgh, he raised reduction of the decreet, and concluded repetition of the fine and damages, with expenses, upon the following grounds ; *1mo*, That he was not subject to their jurisdiction, and was only accidentally at Haddington visiting his wife's relations ; *2do*, That they repelled a just defence of *res judicata*, he having been fined by the Justices of Peace of Mid-Lothian ; and upon both these grounds he contended, that they had committed iniquity, and were guilty of manifest injustice and oppression.

No 203.

Damages and a penalty were claimed for an irregular judgment of an inferior judge. The decree was reduced, but not even expenses were allowed to the pursuer.

It was *pleaded* for the Magistrates, That though the decreets of inferior judges may be reduced, yet it was unprecedented to make such judges liable in penalties for any mistakes which they might have committed in pronouncing their sentences ; but particularly, the defences pleaded were justly over ruled : For, as to the *first*, the crime was inchoat in Haddington, from whence Greig had seduced and carried off the said Calderwood. And further it was *pleaded*, That *ubi res invenitur* is a *forum* in crimes ; and by the act 1695, cap. 12. all ordinary judges have a power of cognoscing, if they can cite or apprehend the party ; for it provides, That action and execution shall pass, either at the instance of the parties concerned, or of the procurator fiscals of the jurisdiction where they shall happen to be questioned.

To the *second* defence it was *answered*, That the Justices of Peace had no power to fine for irregular marriages, for no such power was contained in their original instructions, nor lodged in them by any subsequent law ; and they were not a court which had an ordinary jurisdiction ; but were only commissioners appointed for certain purposes, which appeared plain from the acts 1617, cap. 8 : 1661, cap. 38. and the act 1685, cap. 16. was repealed by the 23th act 1690 : And besides, by the 8th act 1617, ' the Justices were not to proceed to cite parties, till 15 days after committing the facts for which they were convicted, and ' that the ordinary Magistrates had neglected to exercise their right all that time.' And in the present case, the Magistrates pronounced sentence within the 15 days.

No 203. It was *replied*, That inferior judges were not at freedom to oppress the lieges, by repelling obvious and plain defences, but were punishable for such oppressive sentences, by 45th act, Ja. I. ; 76th act, Parl. 14. Ja. II. ; act 26th, James III. &c. And as to the particular answers it was *replied*, That what the Magistrates had fined Greig for, was not properly a crime, but simply a transgression of order, for which the transgressor was only liable to a civil fine, and the marriage was celebrated at Edinburgh ; that the Magistrates of Haddington were not proper judges of the powers of the Justices of Peace ; and that the 12th act 1695, gives the Justices a power to judge of questions of this nature, because the execution of that act is committed to such ministers of the law, who were by the 22d act 1693 ordered to assist in settling the quiet of the church, which extends to all officers of justice.

THE LORDS sustained the reasons of reduction against the decret of the Magistrates of Haddington, but refused expenses.

Act. H. Dalrymple.

Alt. Ro. Craigie.

Clerk, Murray.

Edgar, p. 167.

SECT. II.

To what extent Inferior Judges can Fine.

1612. *January 10.* BAILIE *against* LORD TORPHICHAN.

No 204.

It was found, that a Baron could fine to the extent of L. 50.

IN an action of spulzie pursued by John Bailie of Braidshaw *contra* my Lord Torphichan, for spulziation of a horse pertaining to the said John, which was in the possession of James Bailie his brother, the LORDS found, That it is lawful to a Baron or his Bailie to take any person that commits riot, blood, or oppression upon any of his tenants, by himself, without warrant from the Lords or Council, at any time before his going forth of the barony, and thereafter assoilzied my Lord frae the said spulziation of the horse, and profits claimed ; because it was lawful to take the said James Bailie, who, four days before, had pursued a tenant of my Lord's, and stricken him through the body with a lance with his horse.

Item, in the same cause it was found, That a Baron could impone an unlaw of L. 50.

Fol. Dic. v. 1. p. 501. Kerse, MS. fol. 170.

* * * See Nicolson and Haddington's reports of this case, No 16. p. 4797.
vide FORUM COMPETENS.