

guilty of theft-boot, and thereby had forfeited any claim upon the bill in question.

No 21.

Answered for M'Donald; To make theft-boot, not only the transaction of a crime is required, but also the concealment of it, so as to be assisting in the defeat of justice, or putting the thief *fræ the law*, as the act James V. Parl. 1. cap. 2. expresses it. But here M'Donald only took payment of what he had himself lost; and he was so far from concealing the crime to defeat justice, that he told it to all the world.

'THE LORDS found, that action lay on the bill.'

Act. *Montgomery, Lockhart.*

Alt. *John Dalrymple, And. Pringle.*

J. D.

Fol. Dic. v. 3. p. 177. Fac. Col. No 33. p. 56.

SECT. X.

Riot.

1752. February 18. ELSPETH MARISHAL *against* MARGARET SEMPLE.

A RIOT pursued before the Sheriff of Lanark by Elspeth Marishal *contra* Margaret Semple, was, by bill of advocation, brought before the Lords, *inter alia*, on this ground, that the Sheriff's interlocutor was too extensive in finding the libel relevant to infer an arbitrary punishment, the riot being with such aggravations laid in the libel, particularly of its having been committed by way of hamesucken, that the sentence might, on proof, extend to corporal punishment or banishment; in order to either of which, it was necessary for the Sheriff to have proceeded by a jury.

This reason of advocation the Ordinary 'repelled,' and the Lords 'refused the petition against his interlocutor without answers.'

It was upon this occasion said, that there is no point less fixed than this, when a trial was to be by a jury, and when not; but so far was certain, that inferior judges, particularly the Magistrates of Edinburgh, are in use to judge in riots without a jury, even where banishment from the town, and whipping, has been inflicted.

Fol. Dic. v. 3. p. 178. *Kilkerran*, (DELINQUENCY) No 15. p. 164.

No 22.

Trial of a riot by a Sheriff without a jury, sustained.