

1782. February 20.

No 137.

An action of damages, founded on an acquittal in the Court of Justiciary, is not competent before the Court of Session.

THOMAS GEMMIL *against* COLONEL JOHN WALKINSHAW-CRAWFORD.

COLONEL CRAWFORD having received certain anonymous threatening or incendiary letters, of which he suspected Gemmil to be the author, brought him to trial before the High Court of Justiciary. But Gemmil having been acquitted by his jury, he instituted, on that ground, an action of damages against Colonel Crawford; in support of which he insisted, that it was not competent to have entered any claim for damages in the criminal court.

THE LORDS were of opinion, That this claim was competent before the Court of Justiciary, and only there; as it would be a solecism, for the one Supreme Court to pronounce a judgment founded upon proceedings held in the other. It was further observed, that the claim's not having been entered there, betrayed such a consciousness of its being ill founded, as would have precluded the present action, though otherwise proper; in the same manner as if the demand had been actually made in that Court and rejected.

THE COURT therefore dismissed the action.

Lord Ordinary, *Alva*. Act. *Geo. Fergusson*. Alt. *J. Boswell*. Clerk, *Menzies*.
S. *Fol. Dic. v. 3. p. 346. Fac. Ccl. No 35. p. 56.*

1785. December 9. ABRAHAM LESLIE *against* ALICIA MACKENZIE.

No 138.

Criminal acts subject to the cognisance of civil courts, *ad civilem effectum*.

A DEED granted by a person in favour of his step-daughter was brought under reduction by his heir at law. One of the grounds of reduction was the plea of *turpis causa*, founded on the allegation of an incestuous commerce having subsisted between the granter and the grantee. In bar of this plea, the defender objected, That as it amounted to an accusation of a capital crime, it was subject to the cognisance of the criminal jurisdiction alone, and ought not to be prejudicated by the interference of a civil court.

THE LORDS appointed a hearing in presence on the merits of this objection; in support of which, the defender

Pleaded; The law has not committed to the same judicatories, nor left to the same modes of procedure. the trial of criminal acts, and the cognisance of civil affairs. The determination, therefore, of a civil court, respecting crimes, is not more a legal criterion of guilt, or of innocence, than is the suffrage of any private individual.

If, however, it be said, that civil courts are competent to the trial of such facts, even of a criminal nature, as are necessary to ascertain civil rights, it may be observed, that though the distinction between the two kinds of jurisdiction were supposed to relate, not to the nature of the subject of cognisance, but to that of the penal or patrimonial consequence alone, a *præjudicium* at least must