

1742. February 26. STEWART and Others *against* BOTHWELL.

CERTAIN tradesmen having been employed in the years 1731 and 1732 by the Earl of Lauderdale and Mr Bruce, then General and Master of the Mint, to make pretty considerable repairs, a process was brought against the Lord Belhaven and Archibald Bothwell their successors, for payment of the accounts, as those in whose hands the public money was impressed for defraying the charges of the Mint, and which charges were alleged to be a burden, affecting not only the monies impressed for that year, in which such charges occurred, but also for subsequent years.

Some years ago the Lords had repelled the objection then made by Lord Belhaven to the competency of the Court, and sustained action; after which the cause went on, and the pursuers were allowed a proof of the articles of their accounts before answer: But application being now made for Archibald Bothwell, who had not before appeared, the LORDS 'sustained the objection to the competency, and found that the act of sederunt concerning reclaiming bills did not take place in questions touching the jurisdiction of the Court; and therefore dismissed the action, leaving the pursuers to seek their remedy as accords.'

*N. B.*—The remedy with respect to the present officers of the Mint, was thought to be no other than an application to the Treasury, that being the Court to which only they were to account. That the employers *qua* such were liable there was no doubt.

*Fol. Dic. v. 3. p. 341. Kilkerran, (JURISDICTION.) No 3. p. 316.*

1743. June 17.

JAMES STEEDMAN, Merchant in Kinross *against* CHARLES COUPAR, Sheriff-Clerk there.

THE PURSUER having obtained divorce against his wife, before the Commissars, for her adulterous practices with the defender, brought an action against him of damages, for reparation of the injury.

*Pleaded* in defence, That this process was quite new and unprecedented in the law of Scotland; and however the nature of it may be disguised by words, importing it to be a civil action for damages, yet in reality it was a criminal prosecution, for the alleged crime of adultery, though the Court is not vested with any such criminal jurisdiction, as can authorise it to take proof of the alleged criminal practices, in order to convict the defender of adultery. If this process is therefore of a criminal nature, it surely is not expedient or regular

No 71.

The jurisdiction of the Court of Session does not extend to sums to be accounted for in another court.

No 72.

Action of damages is competent before the Court of Session, at a husband's instance, against a third party for seducing his wife, against whom he had obtained a divorce.