

would despise, and men of integrity would scruple, to take such an advantage of their neighbour. No 15.

The statute is exceptionable in another view; since, comprehensive and unlimited as its terms are, it cannot, without absurdity, be extended indiscriminately to causes of every kind. For example; in the case of a declarator of marriage, it is impossible that a battery, committed by the defender on the pursuer, should at once make them married persons, however clear it might be that no marriage had existed.

*Answered,* Of the import of the statute of 1594, or of those preceding similar enactments which it ratified, there can be no doubt. Nor is it less certain that those laws are still in observance, as was determined in the case of Gordon *contra* Gordon, (No 14. *supra.*) and in some other late instances; so that all inquiry, with respect to the original causes of their institution, is precluded.

THE LORD ORDINARY reported the cause; and

‘THE LORDS found the battery *pendente lite* by the defender John Gillespie sufficiently instructed; and therefore, agreeably to the declarator at the instance of the pursuer Balfour Fowler, found he had good and undoubted right to the property of seven eleventh-parts of the lands of Todsgreen,’ &c.

A reclaiming petition against this judgment, though appointed to be answered, was afterwards refused.

Reporter, Laird Eskgrove.

Att. G. Fergusson.  
Clerk, Home.

Att. M. Ross, M. Cormick.

Stewart.

Fol. Dic. v. 3. p. 70. Fac. Col. No 63. p. 114.

1790: March 4.

JOHN ANNAND *against* JOHN ROSS.

ANNAND having sued Ross in an action of oppression and damages, the defender, while it was in dependence, meeting the pursuer, struck him several blows on the face. Upon this, Annand raised a process of battery *pendente lite*, concluding against Ross on the statute of 1594, that decree should be given according to the terms of the original libel.

The topics insisted on were in substance the same as were urged in the case of Fowler *contra* Gillespie, *supra.*

But Ross having become bankrupt, appearance was also made for his creditors, who stated, that they had a material interest in the question, as this penal statute, if found to be still in force, would operate against them, and deprive them of all fund of payment of their debts. If the statute is still in force, it ought at least to be limited to its own purpose, which was the punishment of the offending party; but it would be injustice to allow it to affect the rights of third parties, who have committed no offence.

No 16.

The defender, in a process of battery, *pendente lite*, having become bankrupt, his creditors insisted that their interest in the original action ought not thereby to be prejudiced. The Court would not listen to this plea.

No 16.

In every competition among creditors, any individual creditor is entitled to scrutinize the grounds of the debts of all those who compete with him, and by whose preference his own fund of payment may be diminished. In the present case, the creditors consider themselves as entitled to examine and canvass the grounds of the original action, in which, if the pursuer prevail, their fund of payment is diminished; in the same manner as they would be entitled to object to the constitution of any debt of a competing creditor.

It is no sufficient answer to them, that, by the operation of a certain penal statute, this debt is constituted against the common debtor. They have no concern with that penal statute, whose operation must be confined to the offender himself. The law might have judged it expedient to punish masterful oppression, by decreeing that the oppressor should lose his suit; but it could never judge it expedient, that in a competition of creditors, false debts should be sustained to the prejudice of true; or, what is the same thing, that no investigation should be allowed, whether the debts are true or false.

The COURT, however, allowed a proof of the battery.

*Act. M. Ross.*

*Att. Fraser Tysler.*

*Fol. Dic. v. 3. p. 70. Fac. Col. No 125. p. 242.*

\* \* \* In an incidental question which occurred in the cause *Caddel against Morthland, &c. voce REPARATION*, the Court again held the laws relative to *Battery pendente lite*, to be in observance.