

tried by gentlemen in the country, who might both consider of the case where-
in the room was at the tenant's entry, and of the facts done by him, before his
removing therefrom, and of the quantity thereof, and of any damage the pur-
suer has incurred thereby, against the ordinary form usually kept in that part
of the country, in labouring of such rooms, and what, in their judgment, the
said skaith would extend to, and to report the same thereafter to the Lords, after
which they declared they would determine upon the quantity of the skaith,
the modification whereof they reserved to themselves, after consideration of the
said report and trial taken. See TACK.

Act. Baird.

Alt. Mowat.

Clerk, Gibson.

Fol. Dic. v. 1. p. 503. Durie, p. 653. & 669.

No 252.

1674. February 3. LAIRD OF STROWAN against CAMERON.

THE LAIRD of Strowan having taken decreet against Sorlie Cameron his own
tenant, in his own Court, for green wood, fish, and other penal statutes, and
having fined him for killing of caperkaillies, and for not presenting a cottar of
his, for whom he became caution by an act of Court; he suspends on these
reasons, that the penalties were exorbitant above the act of Parliament, and
that a Baron could not fine for the penal statutes which belonged to the King,
and should be pursued in the King's court, that the penalties might be appli-
cable to his Majesty. It was answered, That Barons may proceed to capital
punishment, which is much more than the penal statutes, and *de consuetudine*,
time out of mind, determine in penal statutes.

THE LORDS found the allegiance relevant.

The suspender further *alleged* upon the act and proclamation; discharging
penal statutes. It was answered, That that act could not be extended to Ba-
rons, having right *privato jure*. *2do*, It could not extend to the penal statutes
decerned before the act.

THE LORDS found that it did extend to all penal statutes, unless they had tak-
en effect by payment or execution before the act, but found that an act of the
Baron court, not subscribed by the cautioner, albeit subscribed by the Judge
and clerk, could not prove against him, albeit he could not subscribe, seeing
the clerk subscribed not by his warrant. See PROOF.

Fol. Dic. v. 1. p. 503. Stair, v. 2. p. 261.

No 253.

Baron courts
competent to
judge in pro-
cesses for
cutting wood,
fishing in
close time,
and other
such delects
arising out of
penal sta-
tutes.

1674. June 18. WALKER against BROWN.

A PROPRIETOR who has a right of holding courts may pursue before his own
Bailie for teinds to which he has a right, which was found, though the lands

No 254.