(*JUSTICIARY COURT.*)

1783. *March* 19.

YOUNG and WEMYSS *against* The PROCURATOR FISCAL of the CITY of EDINBURGH.

No 12.
Jury trial not requisite to the cognisance of *leviora delicta*.

YOUNG and Wemyss having been accused of committing a riot, in which they assaulted and wounded several people, were brought to trial for that crime before the Magistrates of Edinburgh; the indictment concluding, 'That they 'ought not only to be punished in their persons, by whipping, banishment, 'pillory, imprisonment or otherwise, as to the magistrates shall seem meet; but 'ought also to be fined in the sum of L. 50 each, payable to the complainers.' Those Judges, without the intervention of a jury, proceeded to take cognisance of the offence, and pronounced a sentence against the culprits, ordaining the punishment of whipping to be inflicted. From this judgement they appealed to the High Court of Justiciary, *alleging*, that there was not any legal proof of their guilt, nor could there be, unless it were established by the verdict of a jury. Certain objections to the form of the libel were likewise stated.

THE COURT ordered, That information should be laid before them, concerning the practice of inferior judicatures, in the trial of crimes not inferring death or demembration. Reports on this subject were accordingly made from a considerable number of sheriff-courts, and also from the courts of many royal boroughs. By these it appeared, that the use of jury-trial, in cases like the present, had prevailed in the sheriff-courts, with the exception of the county of Mid Lothian; but that in the royal burghs, the town of Ayr alone excepted, such instances of the interposition of juries had seldom or never occurred.

A hearing in presence was then appointed by the COURT, and a learned argument was maintained by the counsel for the prisoners, tending to evince the legality and the expediency of jury-trial, in the cognisance of all crimes attended with any corporal punishment; it being admitted that fines might be imposed by the sole authority of the judge. The counsel for the Crown, who agreed to argue the point on the part of the public, controverted the plea of the prisoners as to imprisonment only. But the COURT delivered an opposite opinion.

Their Lordships considered, That if the solemnity and detail of jury-trial were to be extended to petty crimes, the same frequency of commission which demands a steady and uniform infliction of punishment, would often render unavoidable the impunity of the offenders. Accordingly, it was observed, at no period of our law has the intervention of juries been required in the trial of those offences to which the smaller corporal punishments, such as are short of life or demembration, are annexed. THE COURT therefore were unanimous in rejecting this reason of appeal. The judgment of the Magistrates, however,

No 12. it may be remarked, from the informalities objected to in the libel, was found to be ineffectual.

Counsel for the Crown, *Solicitor-General, I Campbell, et alii.*
For the Prisoners, *H. Erskine, et Honyman.*

S. *Fac. Col.* (Appendix.) *No* 4. *p.* 7.

1783. *March* 19.
William Brown and Others *against* The Procurator-Fiscal of the Sheriff-Court of Edinburgh.

No 13.
Jury trial indispensable where the higher crimes are charged, tho' inferior punishments be libelled.

William Brown and others were indicted before the Sheriff-depute of Edinburgh, for assaulting, wounding, and intending to murder certain persons in the streets of that city, and for masterful theft of some of their wearing apparel; the libel concluding for the same corporal punishment as those specified in the foregoing report. In this case, likewise, sentence was pronounced without the interposition of a jury, and the prisoners appealed to the High Court of Justiciary.

But here the Court, considering the crime charged to be of a higher nature than that which occurred in the former instance, though the punishments sought by the prosecutor in both were equal, unanimously determined, agreeably to the judgment pronounced on the case of Leonardo Piscatori, 17th January 1771, that the trial by jury was indispensable.

S. *Fac. Col.* (Appendix.) *No* 5. *p.* 8.

1793. *May* 17.
Marquis of Abercorn *against* The Magistrates of Edinburgh.

No 14.
The jury named by a statute for determining the value of property to be taken for a public purpose, are not competent to determine cases of consequential damage.

William Laing had possessed the Duddingston mills, on a lease from the Marquis of Abercorn, since Whitsunday 1786.

The water which supplies these mills is chiefly drawn from Braidsburn, of which the magistrates of Edinburgh, acting under the statute 25 Geo. III. c. 28, for supplying that city with water, had appropriated some of the most considerable sources.

Laing in consequence brought an action of damages against the Marquis of Abercorn, the competency of which a final interlocutor of the Lord Ordinary had sustained.

The Marquis of Abercorn had by this time brought an action of relief against the Magistrates of Edinburgh, who objected to its competency, and

Pleaded; By 25th Geo. III. c. 28. § 43. the Magistrates are authorised to enter into agreement 'with the owners or proprietors of all springs or fountains,