=selves that might be presumed done by Warrant of the Father or Master, upon his Accounts, to recover his Damnel, Stair ibid. or convicted duely unto the Chargers Woods Dead. Bratt. 9 July 1611 Vaus contra L. Balnagoun.

Contravention is incurred by any Fact provoking to Anger and punishable by Dr. & P. Farin. de var. ac. divers. Quest. 107. n. 57. Even by Facts done without the Edict of the Judge before whom caution of Lawburrows was found. Farin. ibid. n. 659. But Contravention of Lawburrows is not inferred by fences arising from a new cause other than that for which caution was in, Prosp. Farin. ibid. n. 403 & seqq.

Breach of Lawburrows is purged by an Action of Contravention which is not competent before any inferior Judge. 9 July 1611 Kennedy contra Kennedy of Jerviswood Stair Lib. 1. Tit. 9. §. 30. Such action is raised with the concourse of the Lord Advocate for his Majesties Interest, who has Right to the Penalty of the Penalty. For the Pains of Lawburrows incurred by Contraventions are divided equally betwixt the King whose Authority is contemned and the injured Party. Act 77. Parl. 6. Act 101. Parl. 18. §. 6. Because there are distinct Interests where the one doth not exclude the other 20 Mar. & 1672 Fridlands contra Cunninghame Sir George M'Kenzie, Observ. on Act 77. Parl. 6. J. 6. is of Opinion that the King's Advocate may sue alone in a Contravention as a crimen fractæ pacis, tho' the Party injured hath discharged it or don't insist. The Lord Stair ibid. §. 9. distinguisheth this, that in a Contravention by Acts or Deeds infringing or disturbing the publick Peace the Officers of State may insist tho' the Party injured by it. But where the Deed of Contravention, having no influence on the publick Peace, produceth only Damage to private Parties, the Officers of State cannot pursue without the Concourse of those Parties injured. In which Sense I take the Practick betwixt Forrest and Turnbull recorded by Hope (May. Bratt. Tit. Contravention) finding, that the King's Advocate cannot insist alone if the injured Party hath discharged the Deed after commencing of the Suit: Which Decision Sir George M'Kenzie is pleased to term illegal.

Where no Caution is found, the Pursuers Title in a Process of Contravention is the Charge, upon which the Contraveener can be insisted against only by an ordinary Action: Wherein he ought to be decerned to pay the greater Penalty, because of the Delay and Expence without Security by Caution to the Pursuer. If Surety be found, an Extract of the Bond of Caution is the sole Title against both the Contraveener and Cautioner, who may be insisted against by Way of Charge upon the Bond, and a Condescendance of the Deed of Contravention given in therewith as a special Charge, in Case of a Suspension of the Charge. But a Warrant for Horning upon the Bond of Caution should not pass of Course that is without some Evidence, at least the Charger giving his Oath of Calumny, that the Contravention is atrocious; seeing Escheat falls upon such Horning: And the special Charge wants to be proved against which any Defences are competent tho' not instantly verified, Stair Lib.

Lib. 4. Tit. 40. §. 5. 6. 'Tis a proper Defence in a Contravention, that the Offence was pass'd from by subsequent Dissimulation, or presumed not to have been taken in ill Part, by the Pursuer's indulging the Defender afterwards to do the same Thing. A Contravention founded on the cutting of Trees in the Pursuer's Wood, was taken off by his granting License to the same Person to cut there, whereby he presumptively remitted the preceeding Injury 11 January 1683 King's Advocate and Dewisten contra Lindsay. Reserving only Action for Damage and Interest. Several Deeds of Contravention cannot be pled by the same Person may be distained separatim when Parties subject him to so many Breaches: The many Persons contravening by one Act, are liable each for the whole Penalty. But in such Case the Lords modify and lessen the Penalty Stair ibid. Bratt. 29 Novemb. 1609 Dundass contra Cunning of Ironside Spotswood Bratt. Tit. Contravention and Lawburrows Stair Lib. 1. Tit. 9. §. 30 in fin. Sir George M'Kenzie Observ. in Act 77. Parl. 6. J. 6. Doubts if the Nature of this may be sought by an Action of Damage and Interest, or if it should be considered as a Part of the Penalty.

In mutual Contraventions for Wadsetting upon Ground where the Property stood under Debate betwixt the Lairds of Lawburrows: The Lords used to turn the Libels into a Note of Variation, and grant Commission to examine Witnesses hinc inde, But the Lord Kames (Lib. 4. Tit. 40. §. 7.) thinks it a more regular Method in such a Case when the Parties allege contrarias to adhere before Answer Witnesses hinc inde to clear the former Possession: Which if found a violent Slander or momentary, should not avail against the Penalty of Contravention. Whereas by converting the Summons into a Declaration the Defender is indirectly spoilzied from the Contravention.

A Breach of Contravention may concur with other penal Actions, as Spuilzie, Ejection, Intrusion or succeeding in the Void, arising from the same Fact. In which Case the Lords give the injured Party his Election, to insist in any of them he pleases, but not to insist in all, unless the Deed be atrocious against the publick Peace Stair ibid. Bratt. 29 Novemb. 1609 Dundass contra Cuming of Ironside

The Penalty of Contravention of Lawburrows being once incurred and paid, cannot be required from the Surety for a second Contravention; seeing he is understood to have engaged himself only for the first Breach Berg. L. 89. §. 5. ff. de verb. signif. Unless he had obliged himself toties quoties Prosp. Farin. de var. ac divers. Crim. Quæst. 107. n. 95.

Our Neighbours of England, in Stead of our Lawburrows bind turbulent Persons to the Peace and good Behaviour which any Justice of Peace may do both here and in England, either at the Suit of another or ex pro-

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