

No 312. of Stirling and Polmaise, No 6. p. 4148.; and which may occur where a neighbouring heritor on the water above or below my mill, erects one of his own which makes mine restagnate, the same will not be allowed ; but if it only deprive of the grist of voluntary comers to my mill, not being thirled, that accidental extrinsic loss will not be considered. And Andreas Gayll, in his Practical Observations, lib. 2. cap. 69. gives many other instances, and particularly *in mundinis* and markets, that they ought not to be granted till all the adjacent heritors be cited and heard how far the grant may prejudice them. But the LORDS did not enter upon the cause, in regard Prestongrange not being a member of the College of Justice, he could not be obliged to answer summarily on a bill ; yet they thought the Jusices of Peace might summarily cognosce the complaint.

Fol. Dic. v. 1. p. 508. Fountainball, v. 2. p. 602.

1710- December 15.

No 313. WALTER FORSYTH, Flesher in Falkland, *against* MARGARET RITCHIE, Relict of — STEEDMAN, Flesher in Kirkcaldie.

WALTER FORSYTH having pursued Margaret Steedman before the Justices of Peace of Fife, as representing her husband, upon the passive titles, for payment of L. 29 Scots, the LORDS advocated the cause upon this ground, That the Justices of Peace are not competent to judge in actions upon the passive titles, except for small debts expressly allowed by the act of Parliament 1661, to be pursued before them.

Fol. Dic. v. 1. p. 508. Forbes, p. 452.

1711. January 19.

No 314. MR CHARLES EYERS, Solicitor of her Majesty's Customs, CAPTAIN JOHN MUIR, late General Surveyor, and PROVOST JOHN BALLANTINE, Collector at Ayr, *against* MUNGO HUNTER, Skipper of the Hopewell, and ALEXANDER CAMPBELL, one of the owners thereof.

No 314. The Justices of Peace can only take a precognition against transgressors in the matter of the customs ; the final trial of which, in order to condemn or clear ships and

JOHN MUIR and Provost Ballantine having convened Alexander Campbell and Mungo Hunter, the one for running a certain quantity of tobacco and brandy ashore without owning the custom-house, and the other for receiving and concealing thereof, before the Justices of Peace of the shire of Ayr ; the pursuers, with the concourse of the Solicitor of the Customs, after witnesses were examined, raised an advocacy of their own process upon this ground, That the Justices of Peace could only take a precognition against transgressors in the mat-

ter of the customs, the final trial whereof, in order to condemn or clear ships and goods, belongs properly to the Courts of Exchequer.

Answered, Ballantine and Muir having owned the jurisdiction of the Justices of Peace by pursuing before them, could not thereafter disown it, and remove the cause, otherwise nothing but confusion would ensue, and processes would be endlessly tossed from court to court, to the unspeakable vexation and oppression of the lieges.

Replied, The public law, and the interest of the Queen's revenue cannot be prejudiced by her inferior officers, who are but informers, and not *domini litis*, going, through ignorance, with her causes before an incompetent court.

THE LORDS advocated the cause from the Justices of Peace, and remitted it to the Barons of Exchequer.

Fol. Dic. v. 1. p. 508. Forbes, p. 481.

1711. July 17.

JOHN SHARP of Hoddam *against* CHARLES MAXWELL of Cowhill.

IN discussing a suspension at Cowhill's instance, of a decret obtained at the instance of the Procurator-fiscal of the Justices of Peace within the shire of Dumfries, and John Sharp of Hoddam, fining Cowhill in 400 merks, for saying that Hoddam was guilty of several acts of falsehood, injustice, and malversation in his office; the LORDS found, that the Justices of Peace are not Judges competent to cognosce upon scandal, or a verbal injury.

Fol. Dic. v. 1. p. 508. Forbes, p. 525.

* * * Fountainhall reports this case.

1711. July 7.—THE Freeholders of the shire of Dumfries being met in November last, to chuse a Member to represent them in the new Parliament, a competition arising betwixt Charles Murray, *alias* Maxwell of Cowhill, and Sharp of Hoddam, who had the right to vote for these lands? Cowhill being offended to see his title controverted, he broke forth into such reflections, that he wondered to see Hoddam pretend, whom the Lords had dispossessed and removed from that estate, for his falsehood and malversations. Hoddam, the next day, gives in a complaint against him for these expressions, to a Quorum of the Justices of Peace, and who were likewise heritors, and present when the defamation was uttered; Cowhill having given in a declinator, pretending they were not Judges competent to what happened at elections, but only the House of Commons; which they rejected, and finding the libel relevant, they took probation; and the same being proved, they fined him in 400 merks; which he suspends on these reasons, *imo*, Incompetency, verbal inju-

No 314.
goods, be-
longs prop-
erly to the
Court of Ex-
chequer.

No 315.
Justices of
Peace not
competent to
judge of scan-
dal, or ver-
bal injuries.