

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-

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ries belonging to the cognizance of the Commissaries, and not to Justices of Peace; but this relating to an election of a Parliament Member, none but a Parliament could judge it; *2do*, Iniquity, in refusing him a sight of the libel, when required; *3tio*, Prescribed, not being complained upon in the Court where committed; seeing Judges, by their intrinsic power, may, *ex incontinenti*, punish indignities done in their presence; but this was not resented till the next day; whereas the law says, *injuria statim ad animum non revocata, cessatur oblita et remissa*. Answered, Justices of Peace through all Scotland have always judged verbal injuries; and much more now, when the privileges of the English Justices are communicated to them by the Union; and this is not in propriety of words a scandal, which is defaming one behind his back, and has no contingency with a debateable election, which would devolve to the Parliament, but is a quite distinct thing. To the *second*, In all such complaints, the Justices proceed *summariè, de plano, et sine strepitu vel figura judicii*, without giving them days to see the libel, but read it, and put them to a present answer. To the *third*, He could not apply to the meeting *qua* freeholders; because, though many of them were Justices of the Peace, yet they were not met there in their judicative capacity, but only to chuse a Knight of the shire; therefore, he behoved to delay till a Court met that could judge it. The Lords were all clear that the Justices could bind any, upon appearance of breach of the peace, to find caution to keep it; but ere they sustained their competency to judge scandals, they desired to see the practice and power of the English Justices, if it extended to such cases; and thought there was no iniquity in proceeding summarily, without giving diets to take up the libel to see. Some thought the fine was too large, and not commensurated to the fault; for fraud and circumvention are legal terms, and used every day, without any punishment. And though there be an excess in self-defence, yet it is not so rigidly punished, as where there is no previous provocation given, as was here: Yet it cannot be justified to defame any person in the face of a Court.

1711. July 18.—THE LORDS advised the debate mentioned *supra*, 7th July 1711, between Cowhill and Hoddam, anent the Justices of Peace in England their power to judge scandals; and Hoddam produced a tractate by one Shephard, wherein he affirms they are competent Judges in such; but it was observed, he wrote in Oliver the Usurper's time, when the Ecclesiastical Courts, to whom these cases properly belong, were suppressed. Cowhill shewed another English Lawyer, called Bain, who writes the Guide to Justices in 1707, who affirms, that such scandals belong not to the Justices of Peace, such as the calling one a knave, &c. unless that he add he offers to prove it. Though this distinction seems very nice, yet the LORDS found our Justices of Peace not competent to such scandals; and, therefore, suspended Cowhill's fine of

400 merks. But this does not hinder Hoddam to insist against him elsewhere, for these atrocious injuries.

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*Fountainball, v. 2. p. 656. & 661.*

1712. January 24.

The JUSTICES OF PEACE of the Shire of AYR, and their FISCAL, *against* The TOWN of IRVING, and several Inhabitants of that Burgh.

THOMAS GRAY, and other Inhabitants of Irving, personally cited before the Justices of Peace of the shire of Ayr, to underlie the law for the unwarrantable importation of Irish victual, being held as confessed upon their not comparance, and fined each in the sum of L. 100 Sterling, they suspended, for the reasons following; *1mo*, The decret was *a non suo judice*; in so far as the Justices of Peace proceeded to give sentence against them, notwithstanding that the Magistrates of the Town of Irving, who have power of repledging their inhabitants, by charters from the Sovereign, ratified in Parliament, and sustained in a Justiciary Court at Edinburgh, November 16th, 1586, compared by their procurator before sentence, and offered to repledge; *2do*, The Justices of Peace committed iniquity in sustaining the libel, though for a crime, relevant to be proved by the suspenders oaths; *3tio*, The Justices had fined the suspenders, who are but poor tradesmen, most exorbitantly, in L. 100 Sterling each.

*Answered* for the chargers, *1mo*, The Town of Irving have no special power of repledging beyond other burghs of Scotland; and, whatever was the privilege of burghs, by the ancient laws, before the regular constitution of judicatures, it is now in desuetude; and other judicatures, constituted since then, have a cumulative jurisdiction with the burghs, and Lords of regality, according to the extent of their jurisdiction. So Justices of Peace are not only, by the act 38th Parl. 1661, empowered, after elapsing of fifteen days, to convene every person, without respect to the privilege of any other jurisdiction; which exception of fifteen days is also taken away by the late act of the British Parliament, in the sixth year of her Majesty's reign; but also, they are proper Judges to punish the importers of victual, act 9th Parl. 1703. And our law looks upon the Magistrates of burghs with so jealous an eye in the matter of victual, that all power of repledging forestallers and regraters is taken from them, act 150th Parl. 12. James VI. and committed to other Judges, in whose place the Justices of Peace are now come; *2do*, By the section 9th of the act 1661, the Justices of Peace may, upon a personal citation, without further solemnity, hold the defender as confessed, as to all crimes and misdemeanours

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The Justices of Peace are competent judges to punish the importers of Irish victual.