1752. *June* 30. ANDERSON *against* MAGISTRATES of Renfrew.

No 80.

THE COURT sustained its jurisdiction in complaints against Magistrates for mismanagement of the burgh revenue.

Fol. Dic. v. 3. p. 341. Fac. Col.

*** This case is No 33. p. 2539. *voce* COMMUNITY.

*** In conformity with this judgment were decided the cases, Dean against Magistrates of Irvine, No 23. p. 2522. *voce* COMMUNITY; and Merchant Company against Magistrates of Edinburgh, 9th August 1765, No 2. p. 5750. *voce* HOSPITAL.

IN a case which had occurred in 1748, the competency of the Court of Exchequer to actions of this kind was contended for, in opposition to that of the Court of Session. THE LORDS, however, sustained their own jurisdiction.—And a similar question being tried in 1784, in the Court of Exchequer, in the case of certain Burgesses of Dunbarton against their Magistrates, that Court found that, *as now constituted*, they had no power to take cognizance of the public accounts of burgh revenues. See No 94. p. 7366.

Fol. Dic. v. 3. p. 341.

1754. *March* 10. GEORGE BUCHANAN *against* JAMES TOWART.

No 81.
The act empowering Justices of the Peace to hear and finally determine offences in destroying trees, does not exclude the Court of Session from a power of review.

GEORGE BUCHANAN proprietor of the woods of Auchindinnan, preferred a complaint to the Justices of Peace of Dumbartonshire, on the 18th act *anno* 1st Geo. I. entituled, 'An act to encourage the planting of timber-trees, &c. 'and for the better preservation of the same,' against James Towart, for cutting and stealing certain trees from the woods of Auchindinnan.

The Justices ordained Towart to be four months imprisoned, and four times whipped, in terms of the statute. He offered a bill of suspension and liberation, which was taken to report to the whole Lords.

The *objection* made to the passing of the bill was, That as, in the statute in question, 'the Justices of Peace are authorised to hear, and finally deter-'mine and adjudge,' all offences against the same; the determination of the Justices was here final; and the Court of Session could not review their sentence.

To which it was *answered* for Towart; In the language of statutes, "finally determine" does not import that the determination shall be final;

For, wherever a statute intends the determination of a court to be final, it uses an expression of its intention much more exact and copious than is contained in these words, "finally determine."

No 81.

Or, where it means to give that import to these words, " finally determine," it continually attends them with the addition of many others explaining its intention.

Cay, in abridging the statute in question, leaves out the word "finally," as a mere expletive; understanding that "finally determine" means nothing more than to bring the cause to an issue, so far as depends upon the justices.

The act of the eleventh of Henry VI. cap. 6. ordaining, That no suit, before former Justices, shall be discontinued by a new commission, gives a power to the new Justices to determine pleas, which were before the former ones, and 'the same pleas and processes, and all that depend upon them, to hear and finally determine.' If "finally determine" signified that the determination should be final; then by this statute of Henry VI. the determination of the Justices would have been final in all questions coming before them, which is not true.

In the act 19th, *anno* 20th Geo. II. entituled, 'An act for the adjusting and 'more easy recovery of the wages of certain seamen,' the Justices have a power finally to determine the disputes therein provided for; notwithstanding which, many sentences of Justices on such disputes have, since that statute, come under the review of the Court of Session.

The statute in question gives no appeal from the sentences of the Justices to the quarter sessions; but when a statute, relating to a crime, intends to give the final determination to the Justices of Peace, it constantly takes care to give an appeal to the quarter-sessions, for the greater safety of the subject.

" The Lords ordained the bill to be passed."

Reporter. *Murkle.* Act. *Lockhart.* Alt. *Boswel & J. Dalrymple.*
J. D. *Fol. Dic. v.* 3. *p.* 344. *Fac. Col. No* 108. *p.* 159.

No 82.

A process of damages for a verbal injury, is competent before the Court of Session in the first instance.

1755. *March* 4. Samuel Auchenleck *against* James Gordon.

Samuel Auchenleck brought a process against James Gordon, for having uttered several defamatory and injurious expressions against him; and particularly setting forth, That Gordon asked the pursuer's son, 'Whether he came 'with a staff to murder him?' adding, 'that the pursuer and his family ought 'to have their faces marked when they offered to murder on the highway; 'that they were a parcel of thieves, robbers, murderers, and coiners of false 'money, and deserved to be banished.' And the libel concluded for damages and expenses of process.

The defender *objected*, That this action being for slander and defamation, could not be brought in the first instance before the Court of Session, as the Commissaries were the only judges competent for questions of that kind.

The Lord Ordinary sustained process, and found the action competent; and, before answer, allowed a proof to both parties.