

1754. *July 9.*BLAW of Castlehill *against* ROBERT GEDDES and Others, Justices of Peace.

No 327.
Justices have
no power of
imprisoning
for civil
debts.

MRS BLAW, the pursuer's wife, having done diligence against him, upon a decret for her separate aliment, the expense of that diligence amounted to L. 13 : 15s. Scots ; she brought action against him for that sum, before the defenders, as Justices of Peace in the Culross district of the shire of Perth ; and, in her libel, she craved not only decret for the said sum and expenses of plea, but also a warrant of warding, in case payment should not be made within fifteen days after the charge.

The defences made for Mr Blaw were ; *imo*, That Mrs Blaw, being clothed with a husband, could not pursue without his consent. *2do*, That the Justices of Peace were not competent judges in this cause.

“ The Justices decerned, and granted warding in common form.”

The pursuer being thereon put in jail, brought an action of wrongous imprisonment against the Justices ; wherein it was *insisted*, *imo*, That the Justices of Peace have no general jurisdiction in civil debts ; and, *2do*, Though they had such jurisdiction, yet they have no power of warding or committing to prison.

Pleaded for the defenders ; That such was the constant practice of the Justices in that shire, as well as in many other shires in Scotland ; and that this practice was founded on public utility.

THE LORD ORDINARY repelled the defence ; and, upon a reclaiming petition,

“ THE LORDS found, That the Justices of Peace did wrong in granting warrant for warding ; but, in respect that the pursuer does not now insist, and that the Justices were in practice of granting warding, they assoilzie, and decern.”

Act. Lockhart.

Alt. Haldane et Bruce.

S.

Fol. Dic. v. 3. p. 358. Fac. Col. No III. p. 162.

1756. *February 10.* WILLIAM FERGUS *against* AGNES RAMSAY.

No 328.

AGNES RAMSAY brought a process against William Fergus, before the Justices of Peace of Stirlingshire, for the sum of L. 50 Sterling, part of which she alleged was due to her as a legacy left her by her deceased husband, whom the defender represented, and the remainder was due by an open account, which she offered to instruct by the defender's oath.

William Fergus declined the Justices of Peace as incompetent, and offered no other defence.

The Justices decerned for the sums libelled, and for L. 4 Sterling of expenses.

No 328.

William Fergus offered a bill of suspension of this decret, and prayed that the decret might be suspended without caution or consignation; for that it was void and null, being pronounced by an incompetent court.

The LORD ORDINARY reported the bill; and the Lords were of opinion that the decret was void and null; and therefore,

“ THE LORDS passed the bill without caution or consignation.”

For Fergus, *Bruce.*

Reporter, *Kames.*

B.

Fol. Dic. v. 3. p. 358. Fac. Col. No 186. p. 277.

1759. February 13.

THOMAS BARLAY, and AGNES SMITH, his Spouse, Pursuers, *against* JOHN CHRISTIE, and JANET SMITH, his Spouse, Defenders.

No 329.

WALTER SMITH, father to Agnes and Janet Smiths, left all his effects to his daughter Janet, excepting L. 100 Scots, which he left to Agnes, by a verbal legacy, a few days before his death.

Agnes brought a process upon the passive titles against Janet and her husband, for payment of this legacy, before the Justices of Peace for the county of Stirling.

Compearance was made for the defenders; and no objection being at first made to the jurisdiction of the court, a proof of the libel was allowed and taken; and the Justices of Peace, upon considering the proof, and mutual memorials thereon, found the legacy instructed; and ordained the defender to depone upon the passive titles. A reclaiming petition was presented to the Justices, in which the want of jurisdiction was objected, and the court declined. To this it was *answered*, That the jurisdiction of the court had been prorogated by repeated steps of procedure, and could not now be declined. The Justices repelled the objection, and decerned conform to the libel.

Against this judgment, the defenders appealed to the quarter-sessions; who found, that the Justices of Peace were not competent judges in this process, and dismissed the same.

The pursuers obtained an advocacy, in which they *pleaded*, That after the clear proof of the legacy brought in this case, the defenders could not now be allowed to render the whole proceedings null, or to object to the jurisdiction, which they had by so many repeated acts acquiesced in: That the Justices of Peace have a jurisdiction in several civil cases committed to them by law; and therefore that jurisdiction is capable of prorogation to other civil cases, by the consent of parties; and it is only where a judge has originally no jurisdiction at all, that it cannot be enlarged by the consent of parties. Thus the

A process was raised before the Justices of the Peace for payment of a legacy, and the defender having made no objection to the jurisdiction, after a proof was adduced, the Justices pronounced decree. The Lords however advocated the cause, upon the ground, that Justices have no jurisdiction in civil matters.