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any wrong, I have no occasion to make any person a defender, but those who have the direct interest in opposition to me. I have no concern with those who have only a consequential interest. This is applicable to the present case. The Justices, in rectifying the abuse, had no concern but with the trustees who committed the abuse. Suppose, in going to travel, I name a commissioner to manage my affairs, who, in my absence, grants a road to a neighbour through my ground. Is it necessary that I must bring a reduction? May I not defend my property, leaving my neighbour to insist upon his grant, in terms of law? The Justices, in effect, have taken this very course. They have refused to stand to the bargain betwixt the suspender and the trustees, and denied him the use of their road, unless he pay toll. To make this step, a process was not necessary. Any man may stand upon the defensive without a process: To him only a process is necessary, who makes a demand. Considering the matter in this light, the suspender must be held as the pursuer, insisting against the Justices to have his transaction made effectual; and, in this view, his objection to the sentence of the Justices is good for nothing.

“ Upon the whole, it was found, that the transaction which the trustees made with the suspender, was an abuse, which the Justices of Peace were by the statute entitled to redress; and they having given sentence accordingly, the Court of Session has no power to review the sentence.”

Fol. Dic. v. 3. p. 344. Sel. Dec. No. 96. p. 132.

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1763. June 30. CARNEGIE of Craigo *against* SCOT of Brotherton.

IN a process, at the instance of an heritor, possessed of a salmon fishing in a river, against an inferior heritor, for regulating his cruive and cruive-dyke, particularly that he should observe the Saturday's slap, that the heels of his cruives should be three inches wide, &c. the Lord Ordinary, after finding the defender bound to observe the statutory regulations, with respect to cruives, declared, that the defender shall be obliged to observe these regulations, under the penalty of L. 50 Sterling.

In a reclaiming petition it was *urged* for the defender, That, as the law has imposed no penalty for contravening these regulations, the Court can impose none; and that the pursuer must be satisfied to sue for damages upon contravention. It was *answered*, That, though damage must follow the contravention, it is beyond the reach of art to ascertain the extent of the damage; and, therefore, there is no other method to enforce such regulations but the annexing a penalty. This, indeed, is ordinarily done by the legislature. But if this remedy be neglected, it ought to be supplied by the Sovereign Court of Equity, in order to make the law effectual; for we cannot suppose a legisla-

ture would intend such an absurdity, as to enact a regulation, and yet leave people at liberty to transgress it at pleasure.

“ THE LORDS unanimously adhered.”

Fol. Dic. v. 3. p. 342. Sel. Dec. No. 207. p. 274.

*** This judgment was reversed upon appeal, but by consent of parties.

1764. January 18.

JAMES RUSSELL, and Others, Portioners and Inhabitants of Cumbernauld, Suspenders, *against* The TRUSTEES for repairing the Roads leading to Glasgow, Chargers.

AN act passed in the 26th of the late King, for repairing certain roads leading to and from Glasgow, and, particularly, ‘ the road leading from the city of Glasgow to Luggie water, and from thence to the town of Cumbernauld, and Redburn Bridge, in the counties of Lanark and Dumbarton ;’ and trustees were appointed for carrying the act into execution.

In pursuance of the act, part of the road from Redburn, west towards Cumbernauld, was made in the direction of the old road ; but afterwards, it was proposed by some of the trustees to carry the new road in a different direction, so as that, at the nearest, it would be about half a mile from Cumbernauld, and the greatest part of it two miles.

This alteration was the subject of a remit to two different committees, one of which reported their opinion in favour of the old, the other, of the new direction. However, a meeting of the trustees, in June 1761, by a plurality of voices, ordered the road to be made in the new direction.

Russell and others, in Cumbernauld, thought their town would suffer greatly by the alteration, and offered a bill of suspension ; to which it was *answered*, That, by the statute, redress ought to be sought by an appeal to the Quarter Sessions ; and the Lord Ordinary on the Bills accordingly refused the bill, reserving to the complainers to apply to the Quarter Sessions. As this deliverance was given on the 11th of August, 1761, the last day of the summer Session, the suspenders could not reclaim, but were obliged to apply to the Quarter Sessions ; and, as part of the grounds through which the road in question was to run lies in Lanarkshire, and part in Dumbartonshire, the suspenders were obliged to appeal to the Quarter Sessions of both counties.

The Quarter Sessions of Lanarkshire found, that the new road ought to be carried in the direction of the old one ; but the Quarter Sessions of Dumbartonshire found, that it was more for the public interest, though it might be

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A turnpike act declared, that the judgments of the Justices of Peace should be final. Part of the road, for repairing which the act was made, lay in two counties. A dispute having occurred, about an intended alteration of the road, *not authorized by the act*, the matter was brought before the Justices of Peace of both counties ; and the Justices of each county pronounced opposite judgments. The Court found, that, in this case, they were competent to review these judgments.