

care to have these fines levied, though this was undoubtedly a part of his office.

No 331.

It was *answered*, That it is no part of the duty of an overseer to levy the fines. All he is to do is to give in his list of deficient; and the act of George I. expressly declares, that the Justices shall grant warrant to the officers to levy their fines. This duty, therefore, belonged to the constables, and not to the suspender.

“THE LORDS, in respect of the irregular proceedings in the beginning, adhered to the Lord Ordinary’s interlocutor.

For the Justices, *Alex. Murray.* For Wood, *Pat. Murray.* Clerk, *Pringle.*
P. M. *Fol. Dic. v. 3. p. 357.* *Fac. Col. No 56. p. 137.*

1762. June 14.

EARL of MORAY and JUSTICES of the PEACE of Fifeshire *against* MAGISTRATES of Kinghorn.

THE LORDS found, That the regulation of the ferry at Kinghorn, and fixing its dues, belonged to the Justices of the Peace of the county.

No 332.

Fol. Dic. v. 3. p. 358. *Fac. Col.*

* * * This case is No 102. p. 1988. *voce* BURGH ROYAL.

1769. January 24.

ROBERT BOYD Suspender, *against* ADAM and THOMAS MILLARS, &c. Chargers.

ROBERT BOYD was sued before the Justices of Peace for the shire of Ayr, for payment of grass-mail, and being found liable, suspended their decret. The question before the Court turned on these points: *1mo*, How far the Justices of Peace had a proper jurisdiction to try this case; and, *2do*, Supposing they had no proper jurisdiction, how far their jurisdiction was, or could be prorogated by the parties.

Pleaded for the suspender; Justices of Peace have no ordinary or radical jurisdiction in civil matters. They are appointed for preserving the peace, for preventing delinquencies, and for punishing those who offend against the peace, but not for chastising other delinquents. Their jurisdiction is entirely criminal, not can it be extended, except as to citation in servants fees, and other small matters specially enacted by statute. Having no proper jurisdiction in private property, the Court of Session has checked every attempt to extend their bounds, and Justices of Peace have been found incompetent judges on the pas-

No 333.
 The Lords sustained a decree of the Justices, pronounced in an action for payment of rent.

No 333.

sive titles ; 15th December 1710, Forsyth, No 313. p. 7596. ; in scandal, or verbal injuries, 17th July 1711, Sharp, No 315. p. 7597. ; in payment of a verbal legacy, 13th February 1759, Barlay, No 329. p. 7611. ; in a debt by a written obligation, 9th March 1763, Dewar. *

There can be but little expediency in having trifling matters determined by Justices of Peace, where there is a Judge-Ordinary with unexceptionable jurisdiction ; but, whatever may be the case with regard to expediency, the jurisdiction of Justices can only be established by act of Parliament.

2do, Justices of Peace not having a proper jurisdiction, their jurisdiction cannot be prorogated. *Prorogatio de causa in causum* is rejected by law and in practice ; nor can a jurisdiction in particular articles, given by express statutes, be extended to causes different from those expressed in these statutes. That consent alone cannot confer jurisdiction, was determined by 13th February 1759, Barlay, No 329. p. 7611.

Urget for the chargers ; The expense of litigation before the Judge-Ordinary, renders it highly expedient for Justices of Peace to judge in small debts ; and the consequences of abolishing their jurisdiction in civil causes of small value would be fatal. Though such jurisdiction may not be constituted by express statutes, immemorial practice has given such sanction to the jurisdiction of Justices of Peace in trifling claims, that it may be considered as part of our consuetudinary law. Where expediency has required it, jurisdiction has been established by practice alone. The jurisdiction of the Bailie-court in small debts and small cheats, is founded in practice, not in statute.

2do, The legislature has not declared the jurisdiction of Justices of Peace incapable of prorogation, and without such declaration of the legislature, the jurisdiction of any judge, though originally incompetent, may be prorogated by consent of parties ; *Voet, Comment. de jurisdict. § 14 l. 1. Cod. de jurisd. omn. judic.* The jurisdiction of Justices of Peace in small debts and little commercial questions, in processes concerning bastard children, horse dealers, &c. has, in innumerable instances, been sustained. The jurisdiction of the Justices, if it can be prorogated, was prorogated in this case. The suspender, when cited, insisted in his defences, and, by repeated acts, acquiesced in the jurisdiction of the Justices.

‘ THE LORDS repelled the reasons of suspension, and found the letters orderly proceeded.’

Reporter, *Lord Justice-Clerk.*

For Chargers *Ja. Boswell.*

For the Suspenders, *D. Dalrymple.*

Clerk, *Home.*

P. C.

Fol. Dic. v. 3. p. 339. Fac. Col. No 85. p. 150.

* Examine General List of Names.