

the other one, the Justices of the Peace had, by shutting it up, equally exceeded their powers, which they derive only from the statutes 1661, cap. 41. and 1669, cap. 16. for that the public were entitled to both roads.

They, therefore, sustained the reasons of reduction.

Lord Ordinary, *Aukerville*.

Act. *Geo. Fergusson*.

Alt. *Ilay Campbell*.

Clerk, *Menzies*.

S.

*Fol. Dic. v. 3. p. 356. Fac. Coll. No. 63. p. 100.*

No 338.

1790. June 15.

JAMES ROBERTSON *against* JOHN SHEDDAN.

SHEDDAN having obtained a decree of the Justices of the Peace for the county of Ayr, against Robertson, for payment of L. 1 : 7 : 1, being the balance of an account of goods, the latter brought a suspension of that decree, on the head of incompetency.

THE LORD ORDINARY "suspended the letters *simpliciter*."

In a reclaiming petition, the charger insisted on the general practice of Justices of the Peace exercising jurisdiction in small questions of debt; on the expediency of that practice, from the simple and summary procedure in their Courts, so beneficial to the parties, in respect both of time and expense; and on the decision of 24th January 1769, Miller against Boyd, No 333. p. 7617. which was said to be the only one in point, the other determinations, relative to the jurisdiction of Justices of the Peace, having occurred in cases that involved intricate discussions of law, unfit for their cognizance.

The Court, however, considered the total incompetency of Justices of the Peace to judge in any ordinary questions of debt, however small the subject of litigation might be, as a point so clear, that it did not admit of the smallest doubt; and, therefore,

THE LORDS refused the petition, without answers.

Lord Ordinary, *Stonfield*.

For the Petitioner, *Cathcart*.

S.

*Fac. Coll. No. 138. p. 274.*

No 339.

Justices of the Peace have no jurisdiction in ordinary questions of debt.

1796. July 5.

WILLIAM SCOTT, Procurator-Fiscal of the County of Mid-Lothian, *against* WILLIAM SMITH, and Others, Chaise-Hirers in Edinburgh.

THE Justices of Peace for Mid-Lothian, in 1760 and 1761, had fixed the hire for a chaise and two horses, travelling post, at 9d. *per* mile, at which rate it continued till October 1795, when William Smith and others, chaise-hirers

No 340.

Justices of Peace have power to regulate the rates of hire for postings.

No 340. in Edinburgh, notified, by advertisement in the newspapers, that, on account of the great rise in the price of horses, oats, and other articles connected with their trade, they meant in future to charge 1s. *per* mile, exclusive of the King's duty.

Upon this William Scott, Procurator-fiscal for the county, presented a complaint to the Justices, praying that the postmasters should be prohibited from making any addition to their fares, without their authority.

The defenders, in answer to the petition, *contended*, That the matter did not fall within the jurisdiction of the Court.

The Justices, 28th October 1795, found "it proved, by the admission of the defenders, that the combination complained of, and the encreasing of the fares for posting, by their own authority, and publishing the same in the Edinburgh newspapers, was illegal and unwarrantable, and in contempt of the authority of the Court; therefore, prohibited and discharged the said defenders, and all others concerned within this county, from exacting a higher rate of fares than those which were in use to be exacted, previous to the attempt made by them in spring 1793, until otherwise ordered by the Justices; and that under the penalty of twenty shillings Sterling for each transgression: And the meeting further appointed the Justices present a committee, any three a quorum, to meet at such times and places as they shall think fit, to take into consideration the regulations of the Justices of the Peace now existing, relative to the fares exigible by the postmasters, with power to receive such propositions as the postmasters shall think proper to lay before them, and to report the whole to the next, or any subsequent meeting of the Quarter Sessions."

The defenders having accordingly applied for permission to encrease their fare, the Justices, after hearing parties, "refused the postmasters' application for a rise in their fares for posting, adhered to the judgment pronounced on the 28th October last, and continued the interdict thereby granted."

The defenders complained of these judgments by a bill of advocation, in which they stated both the grounds on which they thought an encrease of their fare reasonable, and also the argument in law, from which they inferred, that the Justices had no controul over them.

On this last point the postmasters

*Pleaded*, The jurisdiction vested in Justices of the Peace is entirely statutory, 1609, c. 7. and there is no statute which gives them a power to regulate the rates of posting. The only statutes which can possibly be supposed to have done so, are 1617, c. 8. 1633, c. 25. 1661, c. 38. and 1669, c. 16. But the act 1617, c. 8. only empowers them to fix the "wages of labourers, workmen, and servants," and "to set a price upon craftsmens work;" the act 1633, c. 25. is nothing more than a ratification of the former; and, although the words used in 1661, c. 38. are somewhat different from those in the act 1617, it gives them no broader jurisdiction than what is conferred by this last

statute. The act 1669, c. 16. again, gives them no other power, except that of regulating "all things concerning ferries;" a circumstance which strongly confirms the plea of the defenders, as it shews that it required an express statute to enable the Justices to interfere as to the fares to be paid by passengers on water; and, therefore, had it been meant to extend their powers to the regulation of those payable by travellers at land, it would have contained a special clause to that purpose.

In England, from which we borrowed the institution of Justices of the Peace, they have no such jurisdiction as is here claimed; Burn, *voce* Servants, art. 19. Blackstone, B. 1. c. 14. § 2. King v. Kelling; M. 3. G. Mod. Reports, p. 140. King v. Gately.

Indeed, there would have been no expediency in giving the Justices this power, as the competition which naturally arises in such cases will, in general, sufficiently secure the public against unreasonable demands. And, should there even be a few instances, where, from peculiar circumstances, a chaise-hirer may be enabled to exact an exorbitant price; *e. g.* a stage where there is only one inn, the offender may be prosecuted, at common law, for extortion.

*Answered,* It is impossible that any Scots statute should, *in terminis*, empower Justices of the Peace to fix the rate to be paid for post-chaises; because, before the Union, they were unknown in this country. But it is obvious, from the act 1669, c. 16. that the Legislature meant to empower Justices of the Peace to prevent imposition on travellers; and, accordingly, it appears from the proceedings of the Justices of Mid-Lothian, in 1760 and 1761, that they have been in use to regulate the rates of posting.

Neither does it follow, from the Justices of Peace in England not having this power, that it should not fall under the province of those in Scotland. It is nearly two centuries since they were appointed in this country; and, as all jurisdictions may here be extended by usage, they may have acquired, during that period, many powers not possessed by their brethren in England.

And, however just the doctrine may be in most cases, that the price of commodities will find their own level, it will not hold with regard to posting. A traveller, in general, wants the time, and, frequently, the opportunity, necessary for making a fair bargain. The defenders, by allowing that a chaise-hirer is punishable for extortion, in truth concede, that he stands in a predicament different from other tradesmen. A shopkeeper, for instance, may refuse to sell his goods at any price, or he may charge twenty times their value, without committing a wrong which the law can take hold of. But a chaise-hirer must give his horses and chaise to the first comer, and that, too, at a reasonable rate. The business of posting, therefore, as a matter of police, falls, by established custom, to be regulated by the Justices of Peace.

No 340.

A majority of the Court were for sustaining the jurisdiction of the Justices, on the grounds stated for the Procurator-fiscal.

Several Judges, however, delivered an opposite opinion. The Justices (it was observed) derive all their powers from statute; and it is admitted, that there is none from which it can be positively inferred, that the regulation of posting makes part of their jurisdiction; a circumstance which is much to be regretted, and which ought to be remedied by an act of Parliament.

The Court, (15th January 1796,) by the narrowest majority, instructed the Lord Ordinary to refuse the bill, as to the competency of the Justices of Peace; but to pass the bill, to the effect of trying the question, as to the amount of the fares for posting; the complainers being, in the mean time, at liberty to charge 1s. 2d. *per* mile, duty included.

On advising a reclaiming petition, with answers, the Court "adhered."

Lord Ordinary, *Swinton.* For the Procurator-fiscal, *Lord Advocate Dundas, Tait, Hope,*  
*James Clerk, James Gordon.* Alt. *H. Erskine, Catcart.* Clerk, *Menzies.*  
*R. D.* *Fac. Coll. No. 230. p. 534.*

\* \* \* This case was appealed.

The House of Lords (8th January 1798) ORDERED and ADJUDGED, That the appeal be dismissed, and that the interlocutors therein complained of be affirmed. \*

1797. *January 19.*

WILLIAM MURRAY, with concurrence of the Procurator-fiscal of the County of Haddington, *against* ROBERT TURNBULL and ADAM RUSSELL.

No 341.  
 A complaint for shooting pigeons, founded on the acts 1567, c. 16. and 1597, c. 270. cannot be competently brought before the Justices of Peace.

WILLIAM MURRAY, portioner in the village of Tranent, and proprietor of a pigeon-house in it, which had been built by the family of Winton, while the barony of Tranent belonged them, presented a complaint to the Justices of Peace for the county of Haddington, with concurrence of the procurator-fiscal, against Robert Turnbull and Adam Russell, for shooting pigeons. The complaint stated, 'That, by sundry laws and acts of Parliament, and particularly acts 1567, c. 16. and 1597, c. 270. all persons are discharged from shooting at or slaying of doves, (pigeons) with hagbuts, hand-guns, cross-bows, and pistols, and taking of them with nets and guns, under certain penalties, payable

\* It is believed, that the appeal was dismissed entirely on the ground of the appellants having been guilty of an illegal combination to raise the price of posting, and that it was thought by the House of Lords, that, had it not been for this circumstance, the Justices of Peace would have had no jurisdiction in the matter.