

No 344.

sent case, the advocator is also amenable to the ecclesiastical courts. The statute only enacts, that if a constable or other officer failed to appear, or to return a list, or if he made a wrong return, so as to impede the carrying the acts into effect, he was to be punished *de plano*; but the act does not mention schoolmasters or session-clerks as punishable for the offences there mentioned, but only the constable, burgh-officer, or other officers; and being mentioned by name in other clauses, they cannot be comprehended under this general appellation of 'other officers,' in this clause.

*Answered*; Schoolmasters are officers employed under the Lieutenants, for the execution of the militia acts. They, as well as constables, can be compelled to make returns; for so it is expressly provided; and they must, therefore, like the constables, be liable to punishment, if they make false returns. The act could not have been carried into effect, if any fraud committed by them could not be repressed by the Justices. It is at common law an inherent right in every Magistrate to punish all those who act under him, for malversation in their office. Nor was it the original fraud only in making the return which was intended to be punished, but also any device which should impede the execution of the law, as this prevents equally a fair return for balloting. The jurisdiction given by the statute, is not altogether a summary one; for § 65. provides, that all prosecutions shall be commenced within six kalendar months after the fact is committed.

*Observed* from the Bench; The clause in question does not apply to the schoolmasters, but to officers of an inferior kind, and does not mean to confer a jurisdiction for trying the crime of falsehood, especially by a formal *ex post facto* proceeding.

THE LORDS advocated the cause, and asscizied the defender.

Lord Ordinary, *Armadale*.

For Dawson, *Monypenny*.

Agent, *Pat. Orr, W. S.*

Alt. Lord Advocate *Hope, Burnet*.

Agents, *Geo. Robinson, W. S. Ro. Ainslie, W. S.*

Clerk, *Gordon*.

F.

*Fac. Col. No 2. p. 4.*

No 345.

Unless the most apparent iniquity has been done in the execution of the small debt act, by the Justices appointed to carry it into execution, no appeal from their sentence ought to be received.

1803. *January 19.*

JOHNSTON *against* KELLOW.

FRANCIS JOHNSTON in Skypolton was brought before the Justices of Peace for the district of Old Deer in Aberdeenshire, at the instance of William Kellow in Slampton, for payment of L. 2 : 1 : 8, which sum he was ordained to pay, (7th October 1799).

Alleging that the sum, if due, was money owing not by himself, but by his father and mother, and that the conclusion against him was founded upon a supposition that he had intromitted with their effects, Johnston brought an action for reduction of this decree, as the rules of passive representation are of

a positive and peculiar kind, and are not obvious to that feeling of equity and good conscience, which is sufficient to determine the obligations of personal ~~point of jurisdiction; he had not dispute the competency of the Justices in~~

On the other hand, it was *contended*, that the act 39th Geo. III. cap. 46. was intended to prevent tedious and expensive law-suits about small sums; that appeals to superior courts are for this purpose as much as possible discountenanced; and the only rational presumption, as to the conduct of men in this situation, is, that the Justices had sufficient grounds for the judgment they pronounced.

THE LORD ORDINARY (11th July 1801) repelled the reasons of reduction; to which judgment the Court adhered, (23d February 1802), by refusing a petition without answers; and again adhered, upon advising a reclaiming petition with answers.

The view which was taken by the Court was, That unless the most apparent iniquity has been done in the execution of the small debt act, by the Justices appointed to carry it into execution, no appeal from their sentence should be received; that the intention of the legislature was, that the questions of trifling pecuniary importance, to which it applies, should at once receive a final determination; and that, instead of checking useless and injurious litigation, if the Court admit appeals, by inquiring whether the Justices proceeded to judge of points of law, and whether they judged rightly or not on them, there would be no end to law-suits among the indigent, and the salutary influence of this beneficial act would be entirely destroyed.

Lord Ordinary, *Mathven.*

Act, *Horne.*

Agent, *J. Peat.*

Alt. *Maconochie.*

Agent, *J. Morison, W. S.*

Clerk, *Home.*

*F.*

*Fac. Col. No 75. p. 169.*

## SECT. II.

### Quorum.

1714. November 19. LORD FULLARTON *against* EARL of KILMARNOCK.

It was found that three Justices were necessary to make a quorum.

*Fol. Dic. v. 1. p. 508. Dalrymple. Bruce.*

No 346.

\* \* \* This case is No 219. p. 7500.