

400 merks. But this does not hinder Hoddam to insist against him elsewhere, for these atrocious injuries.

No 315.

Fountainball, v. 2. p. 656. & 661.

1712. January 24.

The JUSTICES OF PEACE of the Shire of AYR, and their FISCAL, *against* The TOWN of IRVING, and several Inhabitants of that Burgh.

THOMAS GRAY, and other Inhabitants of Irving, personally cited before the Justices of Peace of the shire of Ayr, to underlie the law for the unwarrantable importation of Irish victual, being held as confessed upon their not comparance, and fined each in the sum of L. 100 Sterling, they suspended, for the reasons following; *1mo*, The decret was *a non suo judice*; in so far as the Justices of Peace proceeded to give sentence against them, notwithstanding that the Magistrates of the Town of Irving, who have power of repledging their inhabitants, by charters from the Sovereign, ratified in Parliament, and sustained in a Justiciary Court at Edinburgh, November 16th, 1586, compared by their procurator before sentence, and offered to repledge; *2do*, The Justices of Peace committed iniquity in sustaining the libel, though for a crime, relevant to be proved by the suspenders oaths; *3tio*, The Justices had fined the suspenders, who are but poor tradesmen, most exorbitantly, in L. 100 Sterling each.

Answered for the chargers, *1mo*, The Town of Irving have no special power of repledging beyond other burghs of Scotland; and, whatever was the privilege of burghs, by the ancient laws, before the regular constitution of judicatures, it is now in desuetude; and other judicatures, constituted since then, have a cumulative jurisdiction with the burghs, and Lords of regality, according to the extent of their jurisdiction. So Justices of Peace are not only, by the act 38th Parl. 1661, empowered, after elapsing of fifteen days, to convene every person, without respect to the privilege of any other jurisdiction; which exception of fifteen days is also taken away by the late act of the British Parliament, in the sixth year of her Majesty's reign; but also, they are proper Judges to punish the importers of victual, act 9th Parl. 1703. And our law looks upon the Magistrates of burghs with so jealous an eye in the matter of victual, that all power of repledging forestallers and regraters is taken from them, act 150th Parl. 12. James VI. and committed to other Judges, in whose place the Justices of Peace are now come; *2do*, By the section 9th of the act 1661, the Justices of Peace may, upon a personal citation, without further solemnity, hold the defender as confessed, as to all crimes and misdemeanours

No 316.

The Justices of Peace are competent judges to punish the importers of Irish victual.

No 316. committed to their care; *3tio*, The chargers submit the exorbitancy of the fine to the Lords modification.

Replied for the suspenders, The Town's right of repledging cannot prescribe but by contrary acts, where they, having occasion to use their right, were either debarred *in judicio contradictorio*, or acquiesced to a contrary practice for the space of 40 years. And the British statute, giving the same powers to the Justices of Peace in Scotland, as those in England have, must be understood with a *salvo*, as to private rights.

THE LORDS found, that the jurisdiction of the Justices of Peace, over the suspenders, is well founded by the acts of Parliament; and that there was no iniquity in sustaining the libel relevant to be proved by their oaths; and remitted to the Lord Ordinary, to modify the fines in the decret, with a particular regard to the circumstances of the offence and offenders.—See OATH OF PARTY.

Fol. Dic. v. 1. p. 508. Forbes, p. 581.

No 317. 1714. November 19. L. FULLARTON *against* Earl of KILMARNOCK.

THE LORDS found, that defenders, before the Justices of Peace, ought to have a competent time to answer, according as the exigency of the matter requires, and allowance of a procurator to compare.

Justices of Peace may summarily imprison, when the cause requires, till payment of the fine.

Fol. Dic. v. 1. p. 509. Dalrymple. Bruce.

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

1741. June 23.
PROCURATOR-FISCAL of the Justice-of-Peace Court of Haddington *against*
FORREST and Others.

No 318.

A process at the instance of the Procurator Fiscal of the Justices of the Peace of Haddington, before the said Justices, against several persons, concluding that they ought to be ordained to demolish their pigeon-houses, in respect they were not possessors of lands or teinds paying ten chalders of victual in terms of the act 19th Parliament 22. James VI. being brought before the Lords by advocacy, it was found, 'That the Justices had no jurisdiction in such a case as this was, ' where the pigeon-houses in question had been used as such for several years; ' and consequently that no action lay at the instance of their Procurator Fiscal.' But it seemed to be the opinion of the COURT, that a recent complaint against