

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

the builder of a pigeon-house would be competent before the Justices of the Peace at the instance of their Fiscal.

No 318.

Fol. Dic. v. 3. p. 356. Kilkerran, (JURISDICTION, &c.) No 1. p. 307.

* * * C. Home reports this case :

THIS Fiscal brought an action upon the 19th act, 22d Parliament James VI. being before the Justices of the Peace, against several persons, wherein he insisted they should be ordained to demolish their dove-cots, in respect they were not entitled by law to keep them ; which process he afterwards advocated.

Objected for the defenders, That the Fiscal, who has his commission from the Justices, has no title to prosecute any actions, but such as were competent to be judged by the Justices of Peace themselves ; for though some actions may be competent before the Justice of Peace Court, where the Fiscal cannot be the pursuer, yet it must be true, that the Fiscal can pursue no action where the Justices cannot judge ; his powers are derived from them, and consequently cannot entitle him to prosecute any thing which may not be brought before that court in the first instance. See the acts 1617, cap. 8. ; 1661, cap. 38. ; and act 1609, cap. 7. intitled, ' Act anent the Commissioners and Justices of the Peace.'

Answered, Though this case is not expressly mentioned in the instructions to the Justices, yet, from the nature of the thing, it appears plainly to be subject to their jurisdiction ; the act upon which this prosecution is founded is a public law, concerning the policy of the country ; and as the Justices jurisdiction extends to all matters relating to the policy of the country, it would be unreasonable to limit their powers in the present question. Their jurisdiction, in common with most other judges, is determined by custom, as much as by express statutes ; and therefore, where cases similar to those particularly laid down in their instructions occur, no good reason can be assigned why those should not be subject to their determination. Their powers extend to encroachments on the high-roads, destroyers of red fish in forbidden times, transgressions in cases of muir-burn, and to such as use privilege of hunting without being duly qualified. Neither is this a question of property. The house in which pigeons are contained, is, no doubt, a subject of property, and may very aptly be called an heritable right ; but then, the privilege of employing that house to a particular use, or to any use contrary to public law, never was called such.

THE LORDS found, That no action upon the act of Parliament anent pigeon-houses, of which the parties had been so long in possession as _____ years, was competent before the Justices of Peace ; and therefore dismissed this process.

C. Home, No 173. p. 289.