

1710. November 9.

The JUSTICES of PEACE within the Shire of Wigton, *against* ROBERT MARTIN of Mool.

No 311.

ROBERT MARTIN of Mool personally cited to appear before the Justices of Peace of the shire of Wigton, the 6th of October 1709, at the quarter session, to answer to a complaint given in against him by James M'Culloch his tenant, for beating and abusing him, and to find caution for keeping the peace in time coming; and not compearing, was again, by warrant of the Justices foresaid, personally cited to the same effect; and, failing to appear upon the second citation, the Justices fined him in L. 50 Scots for his two several contumacies, which decret he suspended.—THE LORDS restricted the fine to L. 10 Scots, conform to the limitations and instructions given to inferior judges, albeit there was a double contumacy; in respect the suspender was but once fined; and the LORDS seemed to be clear, that a person could not be fined for not finding bail to keep the peace, but only might be committed to prison as in the case of lawburrows.

Fol. Dic. v. 1. p. 508. Forbes, p. 440.

1710. December 2.

ROGER OSWALD, &c. *against* MORISON of Prestongrange.

DR OSWALD of Preston having an ancient weekly market that will afford L. 100 Scots of customs yearly, Morison of Prestongrange procures the grant of a new market for his lands adjacent to the said barony of Preston, and makes it on the same day, and at a place very near to that where Preston market is held; whereby the old market is prejudged. Roger Oswald writer to the signet, being factor to the estate of Preston, gives in a bill, with concurrence of the creditors, complaining of this invidious and unneighbourly management, and offers to prove that Prestongrange intercepts the comers to Preston market with corn and other merchandise, and causes them to set them down at his market place; and therefore craves the Lords may summarily redress the injury, and discharge such an oppressive invasion and incroachment.—THE LORDS thought that markets and fairs being only granted by the Sovereign, either in Parliament or by their charters, if Prestongrange had no such erection, then it would be an unlawful convocation of the lieges; and *esto* he had such a grant, yet being long posterior to Preston's market, he ought to have chosen another day, and a different remoter place, and not have made it interfere with a more ancient neighbouring market, which could scarce admit of any other construction but to be done *in æmulationem vicini*; which the Lords have several times condemned and reprobated, as in the case of Pady Fair, observed by Durie, 24th June 1642, Falcouer *contra* Douglas, No 4. p. 4146.; and within these few years betwixt the Town

No 312.

A summary complaint being given in to the Lords, that a neighbour had obtained, by subreption, a grant of a fair from the Crown, *in æmulationem* of the complainant, they found it not competent before them by way of summary complaint; but were of opinion it was competent in this shape before the Justices of Peace.

No 312. of Stirling and Polmaise, No 6. p. 4148.; and which may occur where a neighbouring heritor on the water above or below my mill, erects one of his own which makes mine restagnate, the same will not be allowed ; but if it only deprive of the grist of voluntary comers to my mill, not being thirled, that accidental extrinsic loss will not be considered. And Andreas Gayll, in his Practical Observations, lib. 2. cap. 69. gives many other instances, and particularly *in mundinis* and markets, that they ought not to be granted till all the adjacent heritors be cited and heard how far the grant may prejudice them. But the LORDS did not enter upon the cause, in regard Prestongrange not being a member of the College of Justice, he could not be obliged to answer summarily on a bill ; yet they thought the Jusices of Peace might summarily cognosce the complaint.

Fol. Dic. v. 1. p. 508. Fountainball, v. 2. p. 602.

1710- December 15.

No 313. WALTER FORSYTH, Flesher in Falkland, *against* MARGARET RITCHIE, Relict of — STEEDMAN, Flesher in Kirkcaldie.

WALTER FORSYTH having pursued Margaret Steedman before the Justices of Peace of Fife, as representing her husband, upon the passive titles, for payment of L. 29 Scots, the LORDS advocated the cause upon this ground, That the Justices of Peace are not competent to judge in actions upon the passive titles, except for small debts expressly allowed by the act of Parliament 1661, to be pursued before them.

Fol. Dic. v. 1. p. 508. Forbes, p. 452.

1711. January 19.

No 314. The Justices of Peace can only take a precognition against transgressors in the matter of the customs ; the final trial of which, in order to condemn or clear ships and
 MR CHARLES EYERS, Solicitor of her Majesty's Customs, CAPTAIN JOHN MUIR, late General Surveyor, and PROVOST JOHN BALLANTINE, Collector at Ayr, *against* MUNGO HUNTER, Skipper of the Hopewell, and ALEXANDER CAMPBELL, one of the owners thereof.

JOHN MUIR and Provost Ballantine having convened Alexander Campbell and Mungo Hunter, the one for running a certain quantity of tobacco and brandy ashore without owning the custom-house, and the other for receiving and concealing thereof, before the Justices of Peace of the shire of Ayr ; the pursuers, with the concourse of the Solicitor of the Customs, after witnesses were examined, raised an advocacy of their own process upon this ground, That the Justices of Peace could only take a precognition against transgressors in the mat-