

THE LORDS, without giving any interlocutor upon the competency of one Justice to judge, 'Remitted to the Magistrates of Glasgow, to set the petitioner at liberty, upon his finding bail, not under L. 10 Sterling, for the due performance of his contract; or, upon his deponing that he is unable to find such caution, to set him at liberty upon his enactment to perform the same, under the penalty of L. 100 Sterling.'

No 348.

N. B. He was poor and a stranger.

*Kilkerran, (JURISDICTION.) No 5. p. 313.*

1760. July 10. MARGARET MACKAY *against* WILLIAM HERCULES, Tailor.

No 349.

IN an advocacy from the Justices of the Peace, it was *pleaded*, That the decree had been pronounced by a single Justice, whereas two or more are by law required, for holding a court, or for pronouncing any sentence.

"THE LORDS remitted the cause to the Justices of Peace, with this instruction, That this cause should be judged by two or more Justices of the Peace."

*Act. Wight. Alt. Monro. Clerk, Justice.*

*P.M.*

*Fol. Dic. v. 3. p. 358. Fac. Col. No 230. p. 422.*

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S E C T. III.

Constables.—Action against Justices.

1746. December 23. MELDRUM *against* BROWN.

WALTER MELDRUM had some years ago been banished the shire of Fife, by sentence of the Justices of the Peace, with certification, that in case of his return to the shire, he should be scourged by the hands of the common hangman, &c. Alexander Brown, one of the constables of the bounds, getting information that he had returned to the shire, and was harboured in the house of Walter Meldrum, junior, his son, repaired to the said house with assistants, in order to apprehend him; but being deforced by the said Walter Meldrum, junior, a process was brought against Meldrum before the Justices, in name of the said Alexander Brown, with concurrence of the head constable, and of the procurator fiscal, libelling 'His haunting and harbouring his said father, a banished person; *2dly*, His refusing to open the door of a room in his house, wherein

No 350.  
Found that a constable might apprehend without a written warrant.

No 350.

his father was suspected to be concealed, though required in the King's name to assist in apprehending him; and 3dly, That after the constable had discovered the said Walter, senior, getting out by a back door of the said room, and had actually laid hold on him, the defender had assisted him to make his escape; and concluding the pains of law; which the Justices found relevant, and admitted the libel to probation.

Of this process, a bill of advocation was presented on iniquity; 1st, Because the defence had been repelled, that the constable had no warrant from a Justice of the Peace; 2dly, That the several grounds libelled on were *in cumulo* found relevant, although, in some of them, there was no relevancy; particularly the harbouring or entertaining a banished person was said to be no crime, unless he were intercommuned, and even the refusing to assist in apprehending a father, in order to his being scourged, was what the laws of humanity could not construct to be a crime in any man; 3tio, That notwithstanding an appeal made by the defender to the Quarter Sessions, against an interlocutor of the Justices, repelling an objection to a witness, they had proceeded to examine the witness, on pretence that an appeal to the Quarter Sessions did not stop examination of the witness.

This bill being reported by the Ordinary, the Lords were of opinion, that a constable might of himself apprehend and commit for a crime, without any warrant from a Justice of the Peace; and that neither was there any iniquity in sustaining the libel *in cumulo* relevant to be judged of, as the fact should come out upon proof, although certain of the particulars charged should not *per se* be relevant; but as to the particulars objected to in this case, gave no opinion. They were also of opinion, That an appeal to the Quarter Sessions does not stop the Justices from proceeding and finishing the cause by sentence; but that if against such sentence an appeal be entered, they should admit the appeal, and not proceed to execution till the same be discussed; and therefore, as it appeared from the proceedings, that after taking the oath of the witness objected to by the defender, the pursuer had declared his proof concluded, the Lords "Remitted to the Ordinary to refuse the bill;" but with this instruction, "To proceed to give judgment, reserving to the defender to appeal thereagainst as accords."

*Fol. Dic. v. 3. p. 355. Kilkerran, (JURISDICTION.) No 1. p. 304.*

No 351.

The Lords found that the statute 24th Geo. II. cap. 44. which provides, that

1753. February 6. DUKE OF DOUGLAS against LOCKHART of LEE.

AN action being brought against two Justices of the Peace, for protecting, by a collusive sentence, a fowler alleged to be a common poacher, libelling upon several acts of Parliament against partial and collusive administration of justice, and concluding damages, &c.; the defence was laid upon an act passed the 24th of his present Majesty; and because the dispute turned upon the follow-