

No 347.

1730. December.

REID *against* FINLAYSONS.

IN a suspension of a sentence for breaking or defacing a grave stone, the LORDS found that two Justices made a *quorum*; it being urged, that by the act 6<sup>to</sup> *Annæ*, cap. 6. the powers of the English Justices of Peace are transferred to the Justices of Peace in Scotland; from whence it was inferred, that, as two make a *quorum* in England, the same must obtain here. A further argument was added from the stile of the commission, bearing *duo pluresve*, and also from the constant practice of two Justices judging in matters of excise.—See APPENDIX.

Fol. Dic. v. 1. p. 508.

1748. November 22.

DINWOODY and Others *against* GILLES.

No 348.  
Extent of jurisdiction  
competent to  
one Justice  
of the Peace.

JOHN GILLES of London, pot-painter, engaged for five years with the company set up at Glasgow for pot-painting, and became bound to observe the company's orders, and serve them, and no other, during that space; and after elapsing said term of years, to be at liberty to continue or not; but that if he withdrew, he should not work with any other person in Scotland, separate from said company; all under the penalty of L. 100 Sterling.

Notwithstanding this contract, Gilles, without acquainting his masters, did, at the desire of James Lyle, writer in Glasgow, privately erect an oven, after the shape of a kiln, and made experiment of Mr Lyle's clay, and gave directions for making a turning wheel for turning said clay, &c.

A complaint of this being made by the Company to the Provost of Glasgow, he brought Gilles before him, and, upon his confession, committed him to prison, till he should find caution for his good behaviour in time coming.

Of this sentence, Gilles presents a bill of suspension, which the Ordinary 'refused.'

Upon advising the petition, some of the Lords observed, that although the Provost, even *qua* such, and *separatim* as a Justice of the Peace, might commit to prison till caution were found *judicio sisti*, yet the commitment in the present case exceeded the power of one Justice, as the ordering imprisonment till he should find caution to perform his contract, was a judgment pronounced upon his confession, which it was incompetent for one Justice to do.

Others doubted but that even one Justice might do it, as one Justice may decern a servant to perform his service; for although, by the statute of Cha. II. three Justices of the Peace are a *quorum*. yet, in England, one Justice of the Peace judges in the case of servants; and the same powers that Justices have in England, are given to the Justices of the Peace in Scotland.

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.