

‘ power to suppress it, and that the confining the high-way to that which passes through Easterwoden to the ford, does not fall under the powers given to the Judge Ordinary by the act 41st Parliament 1661 ; and therefore suspended the act of the Justices of Peace.’

And the LORDS ‘Adhered.’

It was thought immaterial to make a strict inquiry, whether one of the roads might not answer the purposes of both ; neither was it thought a proper consideration, whether it might not be expedient that the Justices of the Peace should have power, if they should see cause, to make one high-way serve in place of two ; because, if they had no such powers, as the law now stands, the Legislature only could enlarge them. That they could suppress bye-roads, which travellers are apt to take, was admitted, as by that nothing is taken from them, but what they had no right to have. It also was admitted, that where any part of a road cannot be repaired or made of the breadth the law requires, the Justices of the Peace may throw it upon the next adjacent ground, and estimate the damage of parties, for so much they are empowered to do by the act 1669, c. 16. But where the lieges have two public high-ways, which both the roads were in this case, as the one led to the boat, and the other to the ford, there is no power given by any statute to the Justices to take one of them from them, nor can they alter any of them, farther than such power is specially given them by the statute 1661, which only gives liberty to every proprietor for his own convenience at the sight of the Justices of the Peace, or other Judge Ordinary, to cast about the high-way upon his own ground, not exceeding 200 yards ; but as that was not the present case, it was not thought material, what the difference was of the lengths of the two roads, nor was even the consent of the heritor of Easterwoden thought sufficient to alter the case (which at the same time he now recalled) as the objection to the power of the Justices lies to all and sundry.

Kilkerran, (HIGH-WAYS.) No 1. p. 252.

1749. July 13.

HAIRGRIEVE and JANET DONALDSON *against* The MINISTERS and KIRK-SESSIONS of Linton and Eckford.

THE Ministers and Session-clerks of the said two parishes, having refused to proclaim the banns of the said persons in their respective parishes, for this cause, that they would not comply with the established custom to consign a dollar, which is to be restored in the event it appear that they have not become impatient before marriage, were by them pursued before the Justices of the Peace of Roxburghshire for said refusal ; who, notwithstanding a declinator of their jurisdiction, proceeded to give sentence, “ Ordaining the respective Session-clerks to make proclamation of the pursuers banns on Sunday then next ;

No 323. and after proclamation made, to give proper certificates thereof, with certification."

This sentence being complained of by bill of suspension, the Ordinary, before whom it came, "Refused the bill;" but the suspenders having reclaimed, the LORDS appointed the bill to be seen; at the same time declaring their opinion in such a manner, that it is not likely the case will be again heard of.

THE LORDS were clear, that there lay no jurisdiction with the Justices of the Peace to judge in such matters; and the remedy, in a case of a groundless refusal, was thought to be for the parties to protest upon the refusal to proclaim; and that in that case there would be no penalty due for marrying without proclamation.

Fol. Dic. v. 3. p. 359. Kilkerran, (JURISDICTION, &c.) No 6. p. 314.

1750. July 28.

KENNEDY against DUNLOP.

No 324.
Suspension is not competent of the proceedings of Justices of Peace, on an act 13th Geo. I. for regulating linen manufactures.

A COMPLAINT was given in to the Justices of Peace for the shire of Stirling, by Alexander Kennoway stamp-master in Linlithgow, against certain persons in Stirling and St Ninians, for importing bad lint-seed, and exposing it to sale, contrary to the sanction of an act 13th Geo. I. for the better regulation of the linen manufactures in Scotland, whereby it was forfeited; and they having denied the exposing to sale, compearance was made for John Dunlop merchant in Rotterdam, for his interest, as having furnished the lint-seed, who *pleaded*, That by the statute forfeiture was only inflicted for exposing to sale.

The Justices condemned the lint-seed, and a bill of suspension was offered.

Answered; The statute prohibits the importation of bad lint-seed; and, in an after clause enacts, That all offences against it, shall be determined by the Justices; whose sentences shall not be stopped by any suspension or other process whatsoever; providing that an appeal shall be competent to the quarter-sessions, whose determination shall be final.

Deplied; There is no forfeiture inflicted for bare importation; so in this case the Justices have usurped a jurisdiction not given them by the act, and their decret may be suspended. The suspender also contests the insufficiency of the seed, which was only something discoloured by accidents in the voyage; and if it should appear to be insufficient for sowing, it is no ground for forfeiting it, so long as it was not exposed to sale for that purpose, but it may be used for oil.

Duplied; The act discharges importation, and declares the Justices exclusive Judges of offences against it. When a fact is prohibited, without a certain penalty, the Judges must determine the penalty, and here they have inflicted forfeiture; and no doubt might have imposed a fine, and poynded the goods for it, which would have been equivalent; but whether they have judged well