

1756. *July 15.* MAGISTRATES of Perth *against* TRUSTEES on the Road from Queensferry to Perth.

By the act of the 26th Geo. II. for repairing the road from Queensferry to Perth, it is enacted,—“ that all carters and brewers, occupying carts residing in the counties aforesaid, shall be obliged to perform their several services at the respective high roads, at such times, and for such days, as are prescribed by law ; and that every householder, cottager, or labourer, within the said counties, *respective*, shall work on the highways, by himself, or another,” &c.

It is further enacted,—“ that in case any question shall arise, what persons are liable to perform such services, or to what extent, the Justices of Peace are hereby empowered to hear, *and finally determine* any question in their Quarter Sessions, in their respective counties.”

It is further enacted,—“ that if any person or persons, shall think themselves aggrieved by any order or other proceeding of the said trustees, it shall be lawful for him or them to appeal to the Justices of Peace for the counties of Perth, Fife, and Kinross, respectively, as the same shall happen in their General Quarter Sessions assembled ; who are hereby authorized and empowered to hear and determine the matter in dispute, *and whose order thereon shall be final and conclusive.*”

Under this act, the Justices of Peace for the county of Perth issued an order, appointing all householders in the town of Perth to send a servant to work three days on the road. The Magistrates, on behalf of the inhabitants, presented a bill of suspension to the Court of Session, complaining of this order.

It was PLEADED by the Trustees, *inter alia*, that the suspension was incompetent, the sentence of the Justices being final.

Lord KILKERRAN gives the following statement of the question, and of the proceedings which followed :—

“ The single question is, whether it is competent for us to judge in the case, after the clause in the statute confers the final power of judging on another court ?

“ To go further, and argue what we would or should do were we competent, is to anticipate the very point in dispute.

“ With respect to this, the words of the statute are very strong,—‘ If any question arise, what persons are liable to perform such services, the Justices of the Peace are hereby empowered to hear, and finally determine any question, at their Quarter Sessions.’

“ At first sight this would seem decisive. Here is a question that has arose,—what persons are liable ? and how can any other court judge of it, than this to which the statute has given the power finally to determine ?

“ The objections to this are two, *1st*, That notwithstanding the Justices are empowered finally to determine, that does not exclude the supreme jurisdiction of this Court ; and some instances are given of statutes among the revenue, which, though they give the Justices a power finally to determine, it does not exclude the Exchequer.

“ *2dly*, *Esto*, the jurisdiction of the Justices should be supposed exclusive ; yet no more can be meant than that they should be final judges in any question that

may arise concerning persons who may fall under the description in the act, liable to be called out, that is, say they, inhabitants in the country who only are liable to be called out; but can by no means be meant of persons who are not liable to be called out; and such are the inhabitants of the Burghs, who never were liable to be called out.

“ With respect to the first, I cannot help being of opinion, that a court is empowered finally to determine. It may be competent for this Court to judge of their proceedings, so far as to determine what it is that falls within their powers; but whatever matter is found to be within their power, this Court cannot review their proceedings; and this has been so lately found in the case between one of our brethren and the Justices of Peace of the shire of East Lothian, that I cannot enough wonder that it should now be made a question.

“ And that leads me to the other question, Whether this falls within their power? and if it shall be taken for granted, that the inhabitants of royal burghs are neither by former acts, nor the turnpike acts, understood to be liable to the repairing of the roads, it may be thought to follow that the Justices exceed their powers when they call them out.

“ But how can I take that for granted, when the only judgment that ever was given upon that question in this Court, finds that the inhabitants of the royal burghs were obliged to come out?

“ Now, let me only give this effect to that judgment, as to make it a question whether the inhabitants of boroughs were bound to assist in repairing the highways, and less effect we cannot give it: how can I get over this, that this question having arisen, the Quarter-Sessions are final judges of it?

“ When I say this, I offer no opinion whether that judgment were right or wrong. Perhaps I may think it was a wrong judgment; and that if I were one of the Quarter-Session, I should be of opinion that the order complained of was wrong.

“ But my notion is, that I have no access to give that opinion, that there is no jurisdiction in this Court to judge of that question, because of the clause in the act, that in case any question arise, &c. &c.

“ In judging of this clause, I do not see it necessary for us to determine how the law really stands with respect to the inhabitants of the royal boroughs. It is enough to exclude our jurisdiction that it be a question.

“ *July 6, 1756.*—The question was, whether to pass the bill, but prejudice to the competency, or if the point of competency should be first determined?—which last prevailed, and parties are appointed to be heard this day se’night.

“ *July 15.*—After the cause was heard, it issued in passing the bill. The President took notice of two cases that had occurred in his practice, viz. on the malt-act, where the Justices are declared final, yet the Exchequer was found competent; also where Justices are allowed to condemn spirits, still the Exchequer judge.

“ *July 15.*—After having heard the cause, the bill was allowed to pass, in order to discuss on the bill.