

ture would intend such an absurdity, as to enact a regulation, and yet leave people at liberty to transgress it at pleasure.

“ THE LORDS unanimously adhered.”

Fol. Dic. v. 3. p. 342. Sel. Dec. No. 207. p. 274.

*** This judgment was reversed upon appeal, but by consent of parties.

1764. January 18.

JAMES RUSSELL, and Others, Portioners and Inhabitants of Cumbernauld, Suspenders, *against* The TRUSTEES for repairing the Roads leading to Glasgow, Chargers.

AN act passed in the 26th of the late King, for repairing certain roads leading to and from Glasgow, and, particularly, ‘ the road leading from the city of Glasgow to Luggie water, and from thence to the town of Cumbernauld, and Redburn Bridge, in the counties of Lanark and Dumbarton ;’ and trustees were appointed for carrying the act into execution.

In pursuance of the act, part of the road from Redburn, west towards Cumbernauld, was made in the direction of the old road ; but afterwards, it was proposed by some of the trustees to carry the new road in a different direction, so as that, at the nearest, it would be about half a mile from Cumbernauld, and the greatest part of it two miles.

This alteration was the subject of a remit to two different committees, one of which reported their opinion in favour of the old, the other, of the new direction. However, a meeting of the trustees, in June 1761, by a plurality of voices, ordered the road to be made in the new direction.

Russell and others, in Cumbernauld, thought their town would suffer greatly by the alteration, and offered a bill of suspension ; to which it was *answered*, That, by the statute, redress ought to be sought by an appeal to the Quarter Sessions ; and the Lord Ordinary on the Bills accordingly refused the bill, reserving to the complainers to apply to the Quarter Sessions. As this deliverance was given on the 11th of August, 1761, the last day of the summer Session, the suspenders could not reclaim, but were obliged to apply to the Quarter Sessions ; and, as part of the grounds through which the road in question was to run lies in Lanarkshire, and part in Dumbartonshire, the suspenders were obliged to appeal to the Quarter Sessions of both counties.

The Quarter Sessions of Lanarkshire found, that the new road ought to be carried in the direction of the old one ; but the Quarter Sessions of Dumbartonshire found, that it was more for the public interest, though it might be

No 84.

No 85.

A turnpike act declared, that the judgments of the Justices of Peace should be final. Part of the road, for repairing which the act was made, lay in two counties. A dispute having occurred, about an intended alteration of the road, *not authorized by the act*, the matter was brought before the Justices of Peace of both counties ; and the Justices of each county pronounced opposite judgments. The Court found, that, in this case, they were competent to review these judgments.

No 85.

prejudicial to the town of Cumbernauld, to carry the road in the new direction proposed, and ordered it to be made accordingly.

Russell and others complained of this by a bill of suspension; which having been passed, and afterwards taken to report,

It was *pleaded* for the Trustees, That the Court of Session has no jurisdiction in this matter; because, by the said act, it is provided, that it shall be lawful, for those that think themselves aggrieved by any order or proceeding of the trustees, 'to appeal to the Justices of the Peace of the county where the ground or occasion of such complaint or appeal is given, in their General Quarter Sessions assembled, who are hereby authorised and empowered to hear and determine the matters in dispute, and whose order therein shall be final and conclusive.'

Answered for the suspenders, That the act vests the Justices with a final and exclusive jurisdiction, only as to orders by the trustees that are within the powers committed to them by the act; and, therefore, as the trustees transgressed their powers, by ordering a road quite different from that pointed out by the statute to be made, this Court can competently review the decrees of the Justices, relative to this order of the trustees, which is clearly beyond their statutory powers. But, further, as this road lies within two counties, the Quarter Sessions of which have pronounced contradictory judgments, this is a *casus incogitatus* that does not fall under the act, and the matter would be inextricable without the interposition of this Court.

"THE LORDS repelled the objection to the competency."

For Suspenders, *M. Queen.*

Alt. *William Wallace.*

J. M.

Fol. Dic. v. 3. p. 344. Fac. Coll. No. 126. p. 300.

1764. February 22.

MILLER against BREBNER, &c.

No 86.

A process against debtors within the same sheriffdom, each of them for a sum under 200 merks, is not competent before the Court of Session in the first instance.

A MAN having several debtors within the same sheriffdom, not one of whom owed him to the extent of 200 merks, thought proper, notwithstanding, to convene them all in one process before the Court of Session, and obtained a decree in absence. This decree being suspended, the following interlocutor was pronounced at discussing the suspension: "In respect that the suspenders, though living within the same jurisdiction, were called before the Court of Session *prima instantia*, for payment of sums, each of them under 200 merks, though above 200 merks upon the whole; therefore, suspend the letters *simpliciter*, and decern; reserving to the charger to insist, as accords, before the inferior Court."

Sel. Dec. No. 215. p. 280.