1769. *January* 24. ADAM MILLER, &c. *against* ROBERT BOYD.

JURISDICTION.

Jurisdiction of Justices of Peace sustained in an action for Payment of Grass-maill.

[*Dictionary*, 7617; *Faculty Collection, p.* 150.]

AUCHINLECK. To call men before the Sheriff-court or the Court of Session, in order to obtain payment of a crown or half a crown, would be a great hardship. *Optima legum interpres est consuetudo.* For these 40 years I have been engaged in determining such small causes as a Justice of Peace. Jurisdiction is defined and fixed by usage: such was the case of the Court of Admiralty. In the present case, there is the strongest prorogation: Boyd did not plead on incompetency till he saw his cause lost upon its merits. This is contrary to good faith and honesty.

HAILES. We are not judges of expediency. I admit the expediency, but that will not give jurisdiction. If the law concerning Justices of the Peace is defective, the remedy lies with the Legislature. My difficulty in sustaining the jurisdiction of the Justices, lies in this, that none of the statutes have conferred this jurisdiction upon them, and that the decisions of this Court have constantly denied them such jurisdiction. In 1711, the Justices of the Peace judged of a verbal injury: it was urged, in support of their judgment, that all the Justices in Scotland were wont to judge of verbal injuries. The Court, not satisfied with this, inquired how the law of England stood, as the Justices of the two nations had been put upon the same footing at the Union;—and, upon finding that the Justices in England had no such power, the Court disregarded the plea of usage, and suspended the decree. The decisions, 1759, *Barclay*, and 1763, *Dewar*, are well known. It is very true that the Justices of the Peace seem to have disregarded those decisions; but, if they continue to assume a jurisdiction which the Court of Session has repeatedly denied to them, can they be said to have established a jurisdiction by usage and acquiescence? There is another difficulty which occurs here: The Justices in Ayrshire determine on small debts; the Justices in Aberdeenshire decline themselves.—Shall we say that the usage in the one county has established a consuetudinary jurisdiction, but that there is a different law in the others; or, that the powers of the Justices are more limited in the one county than in the other?

BARJARG. Inferior admirals exercised a jurisdiction in many things which, notwithstanding long usage, the Court has always checked. The law has not fixed the qualifications of Justices, nor limited their number: they may be persons not freeholders; they may be ignorant.

KAIMES. Shall we sustain the jurisdiction of Justices of Peace in small debts, or shall we find that no small debts are to be recovered at all? There is no

medium. The want of a jurisdiction for the recovery of small debts was sensibly felt in England. Upon an application from the town of Colchester, an Act was obtained, erecting a court of conscience there; and, in imitation of this, 40 courts of the same kind have been since established in different places by Act of Parliament.

[*Query*, Does not this point out the remedy of the inconveniences arising from a defect in jurisdiction?]

GARDENSTON. One thing is clear, that the Justices have no legal jurisdiction in this matter. Public expediency and utility is a dubious topic. Every county is not possessed of a man of knowledge and abilities who will amuse himself in determining small causes. We have an incomparable institution for the distributing of provincial justice,—the Sheriff-courts. What occasion, then, is there for extending the jurisdiction of the Justices of Peace?—And if we extend it, Where are we to limit it?

PITFOUR. Here is a struggle between expediency and law. I approve much of the institution of Sheriffs; but, in order to determine all the claims for small debts in different quarters of the country, many more Sheriffs would be required than the law has provided: Sheriffs cannot be everywhere. I see many jurisdictions founded upon usage,—I see the jurisdiction of the Justices of Peace already extended by usage. The law says, that they shall fix wages; usage says, they shall judge upon actions for wages: the law says, they shall inquire as to fornication; usage says, they shall judge as to the aliment of bastard children. If a Justice of Peace goes too far, there are remedies, by appeal to the Quarter Sessions or by suspension in this Court. As to prorogation, I admit that *non datur prorogatio de causa in causam*; but there may be a prorogation *de summa in summam*. As the subject in controversy does not exceed any ordinary servant's fee, I think to that extent the jurisdiction may be prorogated.

MONBODDO. The difficulty is, Where shall we fix the boundary? This is well determined by Lord Pitfour, to the extent of servants' wages and aliment of bastard children.

PRESIDENT. In the last determination upon this point, the Court was equally divided. No better interpreter of law than custom. To find that the Justices have no jurisdiction, would have the effect of introducing confusion. As a Justice of Peace, I always judged in those small causes, and so did Lord Arniston before me:—He thought that a jurisdiction might be established by usage. Were the Justices of Peace to go too far, or to judge on bonds and the like, the Court would interpose; but, in a small debt, in a *negotium rusticum*, they may judge. They are presumed able and intelligent; for the law has given them the power of judging in many cases, and that without appeal.

On the 24th January 1769, "The Lords found the Justices were competent judges, and therefore found the letters orderly proceeded."

Act. J. Boswel. *Alt.* D. Dalrymple. *Reporter*, Justice-Clerk.

Diss. Gardenston, Barjarg, Elliock, Stonefield, Hailes.