

1775. *August 1.*

The JUSTICES of PEACE of the Counties of Mid-Lothian and Fife, *against*
ROBERT GALLOWAY and Others, Pinnacle-men in Leith.

No 335.

The regulation of ferries belongs to the Justices of Peace. See Earl of Moray against Magistrates of Kinghorn, No 332. p. 7617.

GREAT complaints having been often made of the abuses and delays committed by the boatmen and pinnacle-men plying the passage between Leith and Kinghorn, in 1773, a body of regulations was made out and approved by the Justices of Peace of the two counties above mentioned.

The boatmen and pinnacle-men generally acquiesced in these regulations, excepting the masters of three of the pinnaces, and the owner of two of the three, by whom a suspension was preferred of these regulations, and in particular the two following. By the *fourth* regulation for pinnaces it is declared, that ‘ no pinnacle shall take on board carriers baggage nor luggage, nor more than six passengers, nor receive more than ten pence for each passenger, and shall account to the birth-boat, either at Leith or Kinghorn for the time, for each passenger above that number, at the rate of ten pence, and shall be subject beside to a penalty of five shillings for each offence for the use of the poor. *5to*, No pinnacle-man shall interfere with any of the boats, when shipping, or offer their services to passengers, unless called for by them, under the penalty of five shillings Sterling for each offence.’

The reasons of suspension *insisted* on were, *imo*, That the passage over the Frith of Forth from Leith to Kinghorn, does not seem to be one of these ferries committed to the care and oversight of Justices of Peace, and Commissioners of Supply, by the law of this country. It is, at any rate, free to any subject of Great Britain to ply on; and seems to have been viewed by the legislature *ab origine*, not as an inland ferry, subject to the jurisdiction of Justices, but as any other arm of the sea *inter regalia*. And accordingly, it appears, that, when regulations were meant to be made for freight or otherwise at this passage, they were enacted by the acts of Parliament. Thus, there are two statutes, viz. 1425, c. 59. and 1474, c. 61. relative to this passage, which seem to indicate a difference between this passage and ferries over rivers, &c. subject to the jurisdiction of Justices of the Peace and Commissioners of Supply. But, *2do*, The regulations in question are not at any rate binding upon any person, even supposing the jurisdiction of Justices to extend over this passage; for the regulation of ferries, bridges, and high-ways of this kingdom is, by a special statute, (5th Geo. I. c. 29.) committed not to the Justices of the Peace alone, but to the Commissioners of Supply and Justices jointly. No regulations, therefore, even of the common ferries, made by Justices without the concurrence of the Commissioners, are binding either on passengers or ferrymen; and it will not be pretended that the regulations in question were either enacted or recognised by the Commissioners of Supply, either for Mid-Lothian or Fife. *3tio*, What is still more material, in point of authority and jurisdiction, is this circumstance,

that neither the Justices of Peace for the county, nor the Commissioners, have any jurisdiction whatever over the port of Leith. The Lord Provost, Magistrates, and Town Council of Edinburgh, have ample grants of Admiralty from the Crown over that port, and they consequently, and they only, (if any judges at all can) have power to make regulations and by-laws binding at that port. Now, it cannot be shown that the regulations in dispute have been sanctioned by the authority of the Magistracy of Edinburgh to this day. But, 4^{to}, Independently of objections to the jurisdiction of Justices, what they chiefly rest their plea upon is, the grievous hardship imposed upon them by these regulations, equivalent to depriving them of their bread altogether, while, at the same time, not one good purpose can be thereby promoted to the public.

Answered to the *first* reason of suspension, The suspenders might have seen that the freight for the Queensferry, Dundee, and Partincraig, are all fixed by the acts of Parliament quoted by themselves; so that, by this rule, the whole ferries in Scotland would be taken out of the jurisdiction of the Justices of Peace; which certainly never was intended. But, supposing that their argument was good, and that these particular ferries were not, at the time of passing these acts, under the jurisdiction of the Justices of Peace, still it would not avail them now, as, by a much later act, (1669, c. 16.) than any of those referred to, special powers are given to the Justices as to the regulating every thing relating to ferries.

To the *second*, Was this ground of suspending relevant, the short answer that could be made to it is, that the gentlemen who enacted these regulations, were Justices of the Peace and Commissioners of Supply. But, independently of that, it is maintained, that there is no necessity for the concurrence or approbation of the Commissioners of Supply in making these regulations. For, by 1669, c. 16. it is expressly provided, That the Justices of Peace have a power 'to visit the ferries in their shires; and, where the ferry lies betwixt two shires, that they correspond with the Justices of the other shire, to the end they may appoint fit and sufficient boats, and convenient landing places; and so to regulate all things concerning the ferries.' The ample powers given to the Justices by this statute are not diminished or taken away by that of Geo. I.; but only the same powers with the Justices of Peace given to the Commissioners of Supply, which they had not before. And it is expressly provided by that statute, that all laws and statutes made in that part of Great Britain called Scotland, concerning the repairing high-ways, bridges, and ferries, &c. be still in force and put in execution.

The Justices of Peace for the county of Fife apprehend they have still a later authority than the statutes above quoted in support of their jurisdiction; and that is a solemn judgment of the House of Peers, within these few years, in a dispute betwixt them and the town of Kinghorn; by which it was fixed and determined, that they had a joint power with the Magistrates of Kinghorn to regulate the ferry on the Fife side of the water.

No 335.

To the *third* reason of suspension it is *answered*; Were the argument upon this head admitted, it would exclude the powers of the Justices of Peace entirely, as there is no ferry but what is comprehended under the boundaries of some one Admiral or another; and it is absurd to say that a grant from the Crown would exclude the legal authority of a Magistrate, who derives his right from the legislative body. And as to all these three grounds of suspension, supposing them relevant, they cannot now be pleaded, as the suspenders themselves have acknowledged the jurisdiction of the Justices, by applying to them by petition for an alteration of the regulations; and even some of the suspenders have acquiesced in these regulations, by entering and registering their names in the court-books of Leith, in terms of one of the regulations concerning pinnaces, and have also exacted the *rod.* of freight. Surely, had they meant to call in question the validity of the regulations, they ought to have rejected the whole, and not have laid hold of such part as makes for their private interest.

The bill of suspension was refused as to the point of jurisdiction, but passed singly with regard to the merits on the two regulations in question; and the regulations continued in the mean time.

Fol. Dic. v. 3. p. 358. Fac. Col. No 190. p. 118.

1777. March 11.

HALL against ROBERTSON.

No 336.

THE Justices of Berwickshire made an act at their Quarter Sessions, declaring, that, as by the alteration of the stile, the Quarter Sessions appointed to be held by statute, on the first Tuesday of March, and first Tuesday of August, fall within the time of sitting of the Court of Session, whereby they are deprived of the attendance of many of their members; therefore, they resolved, that the said Quarter Sessions shall always be adjourned to the last Tuesdays of March and August. An alteration of a high road being proposed, and agreed to by a majority of those present at a regular statutable meeting, on the 2d August, and, in consequence, begun to be executed; a dissenting member brought a suspension of those proceedings, as contrary to the act and resolution respecting the adjourning of the Quarter Sessions to the last Tuesdays of March and August. THE LORDS were of opinion, that the Justices had no power to adjourn the Quarter Sessions, which were fixed by statute; and they found the letters orderly proceeded, and expenses due to the charger.

Fol. Dic. v. 3. p. 356.