

No 341.

THE LORDS dismissed the action as not competent in its present shape.

Lord Ordinary, *Craig.* For the Charger, *Chas. Brown.* Alt. Lord Advocate *Dundas.*
 Clerk, *Menzies.*

D. D.

Fac. Col. No 9. p. 19.

No 342.

The minister of a parish having, while the office of session-clerk was vacant, received the fees on proclamation of banns and registration of births, the treasurer appointed by the heritors for collecting the funds for maintenance of the poor, brought an action against him before the Justices of the Peace, under the small debt act, for a proportion of the fees, as belonging to the poor; and having obtained decree, a suspension of it was found incompetent.

1797. December 5. THOMAS HAMILTON against The Rev. JOHN SCOTT.

THOMAS HAMILTON, who had been appointed by the heritors of the parish of Avondale to collect the funds for maintenance of the poor, brought an action before the Justices of Peace acting under the small debt-act, (35th Geo. III. c. 123.) against the Reverend John Scott, minister of the parish, for L. 3 : 6 : 8, as the proportion of the fees received by the defender during the vacancy of the office of session-clerk, on proclamation of banns and registration of births, from Martinmas 1794 to Whitsunday 1795, which he alleged had always been appropriated to the support of the poor of the parish.

The defender wrote to the Justices, declining their jurisdiction, upon which they decerned against him, in terms of the libel.

A bill of suspension having been passed, the charger *contended*, that the judgment of the Justices could only be reviewed by reduction, § 10.

Mr Scott, on the other hand, while he admitted that a part of the fees on proclamation of banns, had, in practice, been paid to the treasurer for the poor, *contended*, that this was a misapplication, and that the kirk-session, after paying their beadle and clerk, had a discretionary power as to the disposal of them: That, even if the charger had right to them, the sum concluded for exceeded their amount, and that the suspension was competent, as the Justices, in determining the question, had exceeded their powers, it being evident, from the whole tenor of the act, that the jurisdiction under it was meant to be confined to small questions of debt arising from the ordinary transactions of life, and could not be extended to a case like the present, which was of a declaratory nature, and involved a question with regard to a public fund.

Answered; The act empowers the Justices to determine 'all causes and complaints brought before them, concerning the recovery of debts, and the determining of small causes, or making effectual any demand arising out of personal contract or obligation,' provided the sum at issue do not exceed L. 40 Scots. The words, therefore, as well as the spirit of the enactment, reach all cases where the dispute resolves into a personal obligation to pay a sum of money, in contradistinction to those questions which relate to heritable subjects, or which are of a declaratory nature.

The object of the present claim was not to have the right ascertained in future, but to obtain payment of a debt alleged to be already due, and for which the suspender was personally liable in consequence of his intrusions.

If the charger had received the fees in question, and afterwards refused to account for them, the heritors might have brought an action against him before the Justices. The implied obligation upon the suspender was precisely of the same nature. It is admitted, that the charger has been accustomed to receive part of what is claimed, and it was owing to the suspender's failing to appear that the exact amount was not ascertained.

THE LORD ORDINARY found the letters orderly proceeded.

Upon advising a petition, with answers, several Judges doubted the application of the statute; but a great majority thought the suspension incompetent. The claim, as brought before the Justices, (it was observed), had nothing feudal in its nature, and resolved into a question of personal debt. Being therefore competently laid, the Justices were warranted to pronounce decree in absence, in terms of it. The possession of the treasurer as to part of the fees is admitted. A declaratory action would be necessary to alter the practice.

THE LORDS adhered.

Lord Ordinary, *Metbuen.*
Clerk, *Colquhoun.*

For the Charger, *D. Douglas.*

Alt. *Ja. Millar.*

D. D.

Fac. Col. No 48. p. 112.

1798. *March 7.*

GILBERT OGILVIE, Collector of Excise at Aberdeen; *against* GEORGE MOLLYSON.

THE collector of Excise at Aberdeen brought a complaint before an ordinary meeting of the Justices of Peace of Kincardineshire, against George Mollyson, for dealing in foreign spirits without a license; and the offence being proved, they fined him L. 15 Sterling.

Mollyson offered an appeal against their sentence to the Quarter Sessions, which being refused by the clerk to the Justices as incompetent, he complained by a bill of suspension; and

Pleaded; At common law, an appeal to the Quarter Sessions is competent against every decision of the Justices, and this right is not taken away in excise questions by any statute. Indeed, the act 12th Cha. II. c. 23. declares the judgment of the Quarter Sessions, in such questions, to be final; and if it had been intended that the sentence of an ordinary meeting of the Justices should be so also, the statute would have so enacted. The 6th Geo. I. c. 21. too, expressly points out the mode in which the Quarter Sessions should conduct themselves, in a certain description of appeals from the Justices, in excise questions, which evinces that they have a general power of review in all matters of revenue.

The suspender likewise averred, that his citation before the Justices bore merely, 'for acting against the excise law;' which, he *contended*, rendered an appeal the more necessary, as the vague nature of the citation made it impos-

No 342.

No 343.

An appeal from an ordinary Justice-of-Peace Court to the Quarter Sessions, in revenue matters, is incompetent, unless where it is expressly authorised by statute.