

1807. December 10.

MATHEW GUTHRIE and Others, against HENRY COWAN

No. 17.

By act 39th Geo. III. ch. 66. it is declared that no judgment or conviction pronounced by the justices under it shall be removeable by *certiorari* into any Court whatsoever. An avocation to the Court of Session is nevertheless competent.

By act 39th Geo. III. ch. 66. § 17. entitled, “ *An act for better preventing the damaging of raw hides and skins in the flaying thereof,*” it is enacted, “ That in case any person or persons shall find himself or themselves aggrieved by the judgment of any such Justice or Justices, Magistrate, or Magistrates, in any case where the penalty adjudged shall exceed the sum of 10s. then he or they shall or may, upon giving security to the amount of the value of such penalty and forfeiture, together with such costs as shall be awarded, in case such judgment shall be affirmed, appeal to the Justices at the next general or quarter-session of the peace, and for the county, riding, division, city, liberty, town or place as aforesaid, *who are hereby empowered finally to hear and determine the same ; and in case the judgment of such Justice or Justices shall be affirmed, it shall be lawful for such Justices, at a general or quarter-session as aforesaid, to award the person or persons to pay such costs occasioned by such appeal, as to them shall seem meet, and no such judgment or conviction shall be removeable by certiorari into any court whatsoever.*”

The pursuers, the inspectors of hides for the district of Paisley, complained to the Justices of the Peace of the county, that the defender had in various particulars violated that act, and subjected himself to certain penalties. The Justices decerned against the defender, and their judgment was affirmed by the quarter-sessions. Against this judgment the defender appealed to the Court of Session by avocation. The pursuers contended that the appeal was incompetent. The Lord Ordinary reported the case to the Court (9th March 1805.)

Argument of the pursuers.

In conferring this new branch of jurisdiction upon the Justices of the Peace, it was the evident intention of the Legislature, that their exercise of it should be final, and without appeal. They are authorised *finally to determine* the questions that shall arise under this act; and after allowing an appeal to the quarter-session, it is declared that no such judgment shall be removeable by *certiorari* into any Court whatever. Fair effect ought to be given to the intention of the Legislature, Ersk. B. 1. Tit. 2. § 7. In English practice *certiorari* is a mode of appeal from inferior jurisdiction, similar to that of avocation in Scotland; Blackst. B. 4. C. 19. § 8.

The statute extends to Scotland as well as England in all its enactments, and the manner of its administration ought likewise to be the same. The expedience of the restraints and controul imposed by this branch of commercial police, is equally felt in both kingdoms, and in the one as well as the other the protraction by appeal, of all questions arising in the detail of its application,

would be equally vexatious and injurious. In fair and rational construction it is impossible to impute to the Legislature the inconsistency of intending that the privilege, or rather inconvenience of appeal, should exist in the one kingdom and not in the other.

In several analogous cases the Court have been influenced by these views: 1st, On the act for the better regulation of the linen manufacturers, 28th July 1750, Kennedy against Dunlop, No. 324. p. 7608. 2d, In a case relating to the jurisdiction of the Justices of Peace, 8th January 1756, Justices of Peace of Haddington, No. 83. p. 7350. 3d, On the act relating to the commissioners of supply, 9th August 1778, Foote, No. 100. p. 7385. 4th, In the case 18th December 1753, Duke of Douglas against Lockhart. No. 351. p. 7638. of which the argument applies with singular force to the present instance.

The two cases relied on by the defender, were determined on the principle that the Justices had exceeded their power, a principle according to which the Supreme Court controuls all the inferior jurisdictions in Scotland, 25th June 1779, Patillo, No. 101. p. 7386; 28th May 1793, Countess of Loudon, No. 109. p. 7398.

Argument of the defender.

From the terms of the statute it does not appear that even in England there was to be no appeal from the decrees of the Justices under this act. There are many modes of appealing from inferior to superior jurisdiction, Black. B. 3. ch. 25. § 3. Cro. Jac. 404. Rar. Case adjudged. But of all these modes, that of *certiorari* alone is prohibited. Besides, *certiorari* is a writ of appeal of a more limited nature than that of advocacy, and therefore its prohibition in England does not warrant the inference drawn from it.

All new and particular jurisdictions, derogating from the jurisdiction of the Supreme Court, must be taken strictly, and cannot be extended farther than their constitution explicitly warrants, Black. B. 3. ch. 6. § 10. Ersk. B. 1. Tit. 2. § 7. accordingly in a similar case the Court was influenced by these principles, 10th March 1754, Buchanan against Towart, No. 81. p. 7347. where in the argument applies directly to this question.

So likewise, by act 20th Geo. II. ch. 19. § 6. it is declared that *proceedings in pursuance of this act should not be removed by certiorari, or any other writ, to any other court at Westminster*; yet appeals to the Court of Session are daily entertained.

To the same purpose is the practice under other acts, 25th June 1779, Patillo *sup. cit.*

The Court were of opinion, that in cases like the present, where the privilege of appeal to the supreme Court was not explicitly prohibited, an exclusion of its jurisdiction was not to be presumed. The provision that no judgment or conviction should be removeable by *certiorari* into any court whatsoever, had an exclusive relation to English law and practice. The forms of the English process, the Court were not called on to inquire into, nor supposed

No. 17. to know. These forms were at any rate so dissimilar in the two kingdoms, that from the practice of the one no rule could be drawn for the guidance of the other.

The Court " Advocated, altered, and found expenses due."

Lord Ordinary, *Cullen.* Act. *Ar. Fletcher.* Alt. *David Cathcart.*
James Smith, W. S. and David Stewart, jun. W. S. Agents. *H. Clerk.*

J. W.

Fac. Coll. No. 15. p. 43.

1807. December 12. MICHAEL FORREST against DAVID CRICHTON.

No. 18.
 An action of scandal may competently originate before the Sheriff.

DAVID CRICHTON raised an action against Michael Forrest before the Sheriff of Forfarshire, concluding for damages on account of scandal and defamation.

Forrest objected to the jurisdiction of the Sheriff in such an action. But the Sheriff-Depute repelled the objection, and sustained the process.

Whereupon Forrest advocated, and pleaded, that in actions for scandal, the Commissaries possessed an exclusive jurisdiction. *Ersk. Lib. 1. Tit. 5. § 30.*

Crichton answered.—An action for verbal injury or scandal may originate either before the Supreme Court, the Sheriff, the Justices of the Peace, or the Magistrates of a burgh; and if there are any questions of slander, wherein the jurisdiction of the Consistorial Court is exclusive, it is restricted to those in which a palenode or ecclesiastical censure is required.

But that actions for verbal injury, by which fame is attacked, may commence before the Judge Ordinary, is now beyond controversy. *Bank. Lib. 1. Tit. 10. § 24.*

Accordingly an action for a verbal injury was sustained before the Supreme Court in the first instance; 15th February 1765, *Wilkie, No. 90. p. 7360.*

Such action has also been sustained before the Justices of Peace, 4th Feb. 1752, *Bell against Dundas, No. 325. p. 7609*;—and likewise before the Bailies of Edinburgh, 19th June 1750, *Hamilton, No. 384. p. 7682.*

The Lord Ordinary reported the case to the Court,

And the Court unanimously " Remitted to the Sheriff simpliciter."

Lord Ordinary, *Newton.* Act. *Jo. Cunningham.* Alt. *James L' Amy.*
Agents, Pat. Orr, W. S. and Rob. Speid, W. S. *Mackenzie, Clerk.*

J. W.

Fac. Coll. No. 17. p. 48.