

The Justices decerned for the sums libelled, and for L. 4 Sterling of expenses.

No 328.

William Fergus offered a bill of suspension of this decret, and prayed that the decret might be suspended without caution or consignation; for that it was void and null, being pronounced by an incompetent court.

The LORD ORDINARY reported the bill; and the Lords were of opinion that the decret was void and null; and therefore,

“THE LORDS passed the bill without caution or consignation.”

For Fergus, *Bruce.*

Reporter, *Kames.*

B.

Fol. Dic. v. 3. p. 358. Fac. Col. No 186. p. 277.

1759. February 13.

THOMAS BARLAY, and AGNES SMITH, his Spouse, Pursuers, *against* JOHN CHRISTIE, and JANET SMITH, his Spouse, Defenders.

No 329.

WALTER SMITH, father to Agnes and Janet Smiths, left all his effects to his daughter Janet, excepting L. 100 Scots, which he left to Agnes, by a verbal legacy, a few days before his death.

Agnes brought a process upon the passive titles against Janet and her husband, for payment of this legacy, before the Justices of Peace for the county of Stirling.

Compearance was made for the defenders; and no objection being at first made to the jurisdiction of the court, a proof of the libel was allowed and taken; and the Justices of Peace, upon considering the proof, and mutual memorials thereon, found the legacy instructed; and ordained the defender to depone upon the passive titles. A reclaiming petition was presented to the Justices, in which the want of jurisdiction was objected, and the court declined. To this it was *answered*, That the jurisdiction of the court had been prorogated by repeated steps of procedure, and could not now be declined. The Justices repelled the objection, and decerned conform to the libel.

Against this judgment, the defenders appealed to the quarter-sessions; who found, that the Justices of Peace were not competent judges in this process, and dismissed the same.

The pursuers obtained an advocacy, in which they *pleaded*, That after the clear proof of the legacy brought in this case, the defenders could not now be allowed to render the whole proceedings null, or to object to the jurisdiction, which they had by so many repeated acts acquiesced in: That the Justices of Peace have a jurisdiction in several civil cases committed to them by law; and therefore that jurisdiction is capable of prorogation to other civil cases, by the consent of parties; and it is only where a judge has originally no jurisdiction at all, that it cannot be enlarged by the consent of parties. Thus the

A process was raised before the Justices of the Peace for payment of a legacy, and the defender having made no objection to the jurisdiction, after a proof was adduced, the Justices pronounced decree. The Lords however advocated the cause, upon the ground, that Justices have no jurisdiction in civil matters.

No 329. jurisdiction of the Commissary-court is limited in civil causes to sums within L. 40 Scots; but, by the acquiescence of parties, they may judge to any extent. And this is agreeable to the principles of the Roman law, as laid down by Voet, *De jurisdictione*, § 14.; and therefore the cause ought to be advocated; and the first judgment of the Justices of Peace, finding the libel proven, &c. ought to be affirmed.

Answered, That judging in cases of this kind was contrary to the nature of the jurisdiction given to Justices of Peace, and contrary to the end of their institution, which was originally intended to preserve the peace, and regulate the police of the country, and to judge in some small matters intrusted to their care by particular acts of Parliament, such as the maintenance of the poor, wages, highways, bridges, and ferries, and some things relating to the customs and excise, all granted by express statutes, beyond the precise bounds of which their limited jurisdiction could not be extended: That prorogation of jurisdiction, by tacit consent, takes place only in two cases, *1mo*, When the party is, by a personal privilege, exempted from the jurisdiction of the court, as members of the College of Justice; or, *2dly*, Where the judges' jurisdiction is limited to a certain extent; as, when a party makes no objection to the jurisdiction of the Commissaries, in a question relating to a sum larger than that to which they are limited. There the jurisdiction would be prorogated; because the judge has an inherent civil jurisdiction, capable of prorogation by the consent of parties. But where the jurisdiction is not originally founded; where it is not inherent in the judge, or nature of the office; in short, where there is a total want of jurisdiction in the judge, as to cases of a similar kind, there the tacit consent of parties cannot endow him with it; because, as it is well expressed in the late institute of the law, that would be granting a liberty to every private person to confer jurisdiction; which is absurd and impossible. As therefore the Justices of Peace have no radical jurisdiction in civil matters, such as the present, the judgment of the quarter-sessions, dismissing this cause, was proper; and there ought to be no advocacy.

“THE LORDS advocated the cause, and remitted to the Lord Ordinary to proceed accordingly.”

Act. *W. Stewart.* Alt. *J. Monro.* Reporter, *Lord Justice-Clerk.*
G. C. *Fol. Dic. v. 3. p. 339. Fac. Col. No 170. p. 302.*

1759. February 27.

INHABITANTS of Sneddon *against* The MAGISTRATES & TOWN COUNCIL of Paisley.

No 330.
Jurisdiction
of Justices of
Peace with
respect to
bridges with-

THE Magistrates and Town Council of Paisley granted feu-rights to a number of persons, of a field of ground called the Sneddon, which lies within the