

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.

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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

territory of the borough of Paisley, and upon the banks of the river Cart. Upon this piece of ground, a considerable number of houses were built; and the inhabitants, finding an inconveniency from the want of a bridge over the river at the Sneddon ford, resolved to erect one at their own expense; and accordingly applied to the Magistrates and Town Council, desiring their concurrence; and that they would appoint a committee to inspect the ground, and to determine the most convenient place for the bridge.

The Magistrates were averse to the measure, because there was a small toll payable to them at another bridge over the river within 230 yards above the Sneddon ford; and they also feared that the erection of this new bridge would render the collecting of the duty of two pennies on the pint of ale brewed or imported into the town, more difficult and expensive; besides, that the new bridge might possibly obstruct the scheme of rendering the river navigable, as was proposed by the act imposing the two pennies on the pint of ale. For these reasons, the Magistrates did not signify their concurrence to the building the new bridge.

The inhabitants of Sneddon applied therefore to the Justices of the Peace of the county of Renfrew, praying their authority for erecting the bridge.

The Justices of the Peace appointed the Magistrates of Paisley to give in their objections against this measure. This they refused to do, but moved a declinator of the jurisdiction of the Justices. The Justices of the Peace, disregarding this declinature, appointed a committee of their number to visit the place where the bridge was proposed to be built, and to consider how far it could hurt the navigation of the river, or obstruct the ford.

That committee reported their opinion, "That the bridge would be of general advantage both to the town of Paisley and the country adjacent; and that they could see no damage it would occasion, either to the navigation of the river, or to the ford." The Justices, upon this report, unanimously authorised the bridge to be built in a direct line with Sneddon street.

The Magistrates obtained a suspension of the decree of the Justices; and *contended*, That the Justices had no jurisdiction with respect to the streets, buildings, highways, or bridges, within their territory; for that, by several charters of erection, this borough had every privilege of a royal borough, excepting that of sending a member to Parliament: That the town of Paisley was erected into a burgh of barony by a charter from the Crown in 1438, in favour of the Abbot of Paisley, with power to him to elect annually a Provost, Bailies, and other office-bearers: That, in 1490, the Abbot disposed the borough in favour of the Provost, Bailies, and community, which was confirmed in the 1658, by the Lord of erection of the abbacy, who disposed the superiority and common lands thereof in favour of the Magistrates, Council, and Community; all which, in the year 1665, was confirmed by a charter of resignation from the Crown: That, in consequence of these charters, more ample privileges are granted to this borough than what in general belong to

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in the territory of a borough of barony sustained.

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boroughs of barony; and the Bailies have the sole power of receiving resignations of the burgage-lands, and of giving sasines thereon; and they have always exercised the exclusive power of regulating the public police within the borough: That as the erecting of a bridge within their territory is a very important article of police, they must have the sole power of judging in the first instance concerning that matter, subject to the review of the Court of Session; for although the Justices of Peace have been in use to interpose their authority with respect to highways, bridges, and ferries, in such boroughs of barony as are not incorporations, but depend upon the baron; yet no attempt has ever been made to exercise that authority in such boroughs of barony as are proper incorporations, and governed by their own magistrates; and the Magistrates have, in this case, good reason to oppose this bridge, on account of the loss it would occasion to the town's revenue, as well as the injury that would arise from it to the intended navigation of the river.

Answered, The usefulness of the bridge, both to the town and country, is sufficiently proved by the report of the Justices of the Peace, who examined into that matter as a committee; which is also proved by the readiness of the inhabitants of Sneddon to build it at their own expense. It can occasion no obstruction to the navigation of the river, more than other bridges do, which have been built across navigable rivers. And as to the two branches of the town's revenue, the inhabitants of Sneddon have offered to take a lease of these from the Magistrates at the same sums they now yield.

With respect to the jurisdiction of the Justices, the statutes which give them a superintendency over highways, bridges, and ferries, have made no distinction, whether these are situated within the territory of any borough or not; nor has there been any judgment of the Court restricting their power in that manner. None of the charters in favour of the borough of Paisley have granted any powers as to ferries or bridges exclusive of the general jurisdiction vested in the Justices by the public law. This passage over the river Cart is part of a public highway; and as every person is at present at full liberty to pass by the ford, and that the Justices could undoubtedly authorise the clearing the ford of any obstructions, they have an equal right to authorise the building a bridge. And indeed, as the ground on each side of the river is at this place private property, the bridge might have been built at the expense of these proprietors, without any authority from the Justices, were it not that one end of the bridge is intended to rest upon a public highway.

Observed on the Bench, The town of Paisley holds of the Crown; yet it never was doubted, that it was subject to the jurisdiction of the Justices of Peace.

“THE LORDS repelled the reasons of suspension, and allowed the bridge to be built.”

For the Chargers, *Lockhart.*

Att. *Wight, T. Miller.*

W. J.

Fol. Dic. v. 3. p. 358. Fac. Cos. No 178. p. 317.