

1741. *June 30.*

EARL of HOME, SIR JOHN BAIRD, and other JUSTICES of the PEACE of the Shire of Berwick *against* SIR ROBERT PRINGLE, and Others.

No 319.

FOUND, that the head burgh of the shire is the place where the Justices of the Peace ought to hold their quarterly courts or sessions, and that the Justices could not appoint their sessions to be held at any other place, although there is no special statute for that effect.

Fol. Dic. v. 3. p. 359. Kilkerran, (JURISDICTION, &c.) No 2. p. 308.

*** Lord Kames reports this case :

1741. *July.*

By the 38th act 1661, the Justices of the Peace, among other instructions to them, are required 'to meet and convene together four times in the year, viz. the first Tuesday of May, the first Tuesday of August, the last Tuesday of October, and the first Tuesday of March.' And, it is declared, 'That they shall have power to continue the said sessions, or to adjourn the same to such days and place as shall be most convenient.' Some of the Justices of the Peace of Berwickshire, judging Greenlaw, the head burgh of the shire, to be an inconvenient place for their meetings, did, at an adjournment of the quarter-sessions, make a regulation in the form of a resolve, as follows; 'They resolve, that for hereafter, they will hold their quarterly sessions, and other intermediate meetings in Dunse, excepting when occasionally their affairs render it proper for them to meet at some other place; and appoint the constables to notify this resolution to all the people of the country, by publishing the same at every kirk-door of the county, on the second Sunday of June after the forenoon's sermon.'

The other Justices apprehending that this regulation was beyond the power of the Justices, brought it under review by suspension; in which they *urged*, that the head burgh of the shire is, by common law, the place where all courts are to be held, unless the contrary be specified; and that this is supposed in the statute 1661, naming the days of meeting, but saying nothing of the place, leaving that to the regulation of the common law.

'THE LORDS suspended the regulation *simpliciter*.'

Rem. Dec. v. 2. No 21. p. 36.

1747. *July 17.*

RAMSAY *against* ADDERTON.

No 320.

A COMPLAINT against a custom house officer, for an improper seizure of foreign spirits, being brought before the Justices, who decerned for restitution of

the seizure, with a sum for expenses, the cause was advocated ; and the LORDS found, that the justices had no jurisdiction in this case, that it was incompetent before the Court of Session, and only cognizable in the Court of Exchequer.

No 320.

Fol. Dic. v. 3. p. 359. Kilkerran.

* * * This case is No 307. p. 7590.

1747. *June 26. & July 30.*

CALDWAL *against* M'DOUAL and M'CULLOCH for his interest.

AN information being laid at the instance of William Caldwell, supervisor of Excise, before the Justices of the Peace of the stewardry of Kirkcudbright, against James M'Doual, for the clandestine running of brandy and rum ; and he not appearing, though personally cited, the Justices proceeded to take trial of the fact ; and, upon advising the proof, on the 29th of August 1744, ' Found him guilty, and fined him in L. 40 Sterling in terms of the statute, whereof L. 15 was decreed to his Majesty, the like sum to the informer, and the other L. 10 in name of expenses ; and granted warrant to constables and officers of Excise, to arrest his effects wherever they could be found within the stewardry.'

No 321.

The Justices cannot grant warrant for arrestment on Excise decrees ; and forthcomings on such arrestments are void.

On this decree arrestment was used in the hands of John M'Culloch younger of Barholm, and furthcoming pursued before the said Justices, wherein M'Culloch appeared, and acknowledged, that at the date of the arrestment, he was owing to M'Doual L. 47 Sterling by a bill, which he had since that time retired, and accepted a new one for the like sum, and was content to pay, provided he could do it with safety : Upon advising which acknowledgment, the Justices found, ' That the renewing the bill was collusive, in order to avoid the effect of the arrestment ; and therefore decerned him to make payment of the L. 40, and M'Doual to give allowance thereof out of the sum contained in the bill.'

Of this decree M'Culloch obtained suspension, on these grounds, *imo*, That the principal debtor was not duly called in the furthcoming, having been out of the kingdom at the time of the citation at his dwelling house ; *2do*, That the Justices of the Peace were no ways competent to judge in furthcomings. And at discussing, the ORDINARY, in respect that the principal debtor was out of the kingdom, the time of the citation, ' turned the decree of furthcoming into a libel, and granted diligence for citing him.'

But in the mean time the act passed of the 18th of his present Majesty, ' indemnifying persons guilty of the unlawful importing or running prohibited or uncustomed goods ;' which upon a general letter of attorney from M'Doual, to pursue all processes in his name, and to defend in all actions brought against