

No. 63. 1753, Feb. 6, Dec. 18. THE DUKE OF DOUGLAS *against* TWO JUSTICES OF PEACE.

IN a case reported for advice by Kilkerran, (28th July 1752) on a question the Duke of Douglas and two Justices of Peace, the Lords found, that the 44th act 24th Geo. II. for rendering Justices of Peace, &c. more safe in the execution of their offices extends to Scotland as well as England, though the procedure must be in our own forms. *Vide* 19th December 1752 the same case.

On a reclaiming bill against Kilkerran's interlocutor, advising with us 28th July and answer, the Court (19th December) was much divided. The first question was, Whether that act (44) 24th Geo. II. extended to Scotland? The President thought it did as to the prescription or limitation of actions against Justices, but not as to the manner of trial which by that act can only be by Juries. Others again thought it impossible to separate the clauses of that act, and that if the limitation extended to Scotland so must the whole act, and as it was impossible that the Legislature could intend such an alteration of our law, which would confine all complaints against Justices of Peace to the Court of Justiciary, they thought that none of it extended. But upon the question it carried that it does extend to Scotland so far as concerns the prescription, *renit. multum* Murkle, Woodhall, *et me.* (Kames was *non liquet.*) The next question was, Whether this complaint fell under that act? and the President and Drummore, &c. thought it did not, because by the preamble it was intended only to save from innocent errors, whereas this was wilful and a plain collusion. Others again thought that the act could not be intended to save them from errors that either at common law or in common sense ought not to be punished either in six months or one month, that is innocent errors, but after so long a time they should not be obliged to justify their proceedings, and that all should be presumed innocent, the words being, "That no action shall be brought for any thing done in the execution of his office," and by the preamble the actions to be brought within the six months are for wilful and oppressive abuse of the laws. The President answered, That what was done collusively was not in the execution of the office. Upon the question it carried that it was within the act, *renit. multum* President, Drummore, Shewalton, and Kames. But 6th February 1758 found that the act does not extend to Scotland, and so also now thought the President.

No. 64. 1754, Feb. 1. SIR ROBERT GORDON *against* DUNBAR of Newton.

SIR ROBERT pursued declarator of property and of the marches of his lands of Roseisle wherein I gave an act before answer, and remitted to the Sheriff of Moray to take the the proof and to try the case by an inquest and to set march stones. The Sheriff summoned an inquest of some of the principal heritors in that part of the county, before whom a very laborious proof was led that took up several days, and in which the Jury appeared to have bestowed a great deal of pains and travel the whole ground with most of the witnesses, marking the places deposed to by them severally, and at last returned a very pointed verdict, bearing, that after consideration of the whole proof on both sides, "we