

No 312.

of Stirling and Polmaise, No 6. p. 4148.; and which may occur where a neighbouring heritor on the water above or below my mill, erects one of his own which makes mine restagnate, the same will not be allowed ; but if it only deprive of the grist of voluntary comers to my mill, not being thirled, that accidental extrinsic loss will not be considered. And Andreas Gayll, in his Practical Observations, lib. 2. cap. 69. gives many other instances, and particularly *in mundinis* and markets, that they ought not to be granted till all the adjacent heritors be cited and heard how far the grant may prejudice them. But the LORDS did not enter upon the cause, in regard Prestongrange not being a member of the College of Justice, he could not be obliged to answer summarily on a bill ; yet they thought the Jusices of Peace might summarily cognosce the complaint.

*Fol. Dic. v. 1. p. 508. Fountainball, v. 2. p. 602.*

1710- December 15.

No 313.

WALTER FORSYTH, Flesher in Falkland, *against* MARGARET RITCHIE, Relict of — STEEDMAN, Flesher in Kirkcaldie.

WALTER FORSYTH having pursued Margaret Steedman before the Justices of Peace of Fife, as representing her husband, upon the passive titles, for payment of L. 29 Scots, the LORDS advocated the cause upon this ground, That the Justices of Peace are not competent to judge in actions upon the passive titles, except for small debts expressly allowed by the act of Parliament 1661, to be pursued before them.

*Fol. Dic. v. 1. p. 508. Forbes, p. 452.*

1711. January 19.

No 314.

The Justices of Peace can only take a precognition against transgressors in the matter of the customs ; the final trial of which, in order to condemn or clear ships and

MR CHARLES EYERS, Solicitor of her Majesty's Customs, CAPTAIN JOHN MUIR, late General Surveyor, and PROVOST JOHN BALLANTINE, Collector at Ayr, *against* MUNGO HUNTER, Skipper of the Hopewell, and ALEXANDER CAMPBELL, one of the owners thereof.

JOHN MUIR and Provost Ballantine having convened Alexander Campbell and Mungo Hunter, the one for running a certain quantity of tobacco and brandy ashore without owning the custom-house, and the other for receiving and concealing thereof, before the Justices of Peace of the shire of Ayr ; the pursuers, with the concourse of the Solicitor of the Customs, after witnesses were examined, raised an advocacy of their own process upon this ground, That the Justices of Peace could only take a precognition against transgressors in the mat-