

No 85.

prejudicial to the town of Cumbernauld, to carry the road in the new direction proposed, and ordered it to be made accordingly.

Russell and others complained of this by a bill of suspension; which having been passed, and afterwards taken to report,

It was *pleaded* for the Trustees, That the Court of Session has no jurisdiction in this matter; because, by the said act, it is provided, that it shall be lawful, for those that think themselves aggrieved by any order or proceeding of the trustees, 'to appeal to the Justices of the Peace of the county where the ground or occasion of such complaint or appeal is given, in their General Quarter Sessions assembled, who are hereby authorised and empowered to hear and determine the matters in dispute, and whose order therein shall be final and conclusive.'

*Answered* for the suspenders, That the act vests the Justices with a final and exclusive jurisdiction, only as to orders by the trustees that are within the powers committed to them by the act; and, therefore, as the trustees transgressed their powers, by ordering a road quite different from that pointed out by the statute to be made, this Court can competently review the decrees of the Justices, relative to this order of the trustees, which is clearly beyond their statutory powers. But, further, as this road lies within two counties, the Quarter Sessions of which have pronounced contradictory judgments, this is a *casus incogitatus* that does not fall under the act, and the matter would be inextricable without the interposition of this Court.

"THE LORDS repelled the objection to the competency."

For Suspenders, *M. Queen.*

Alt. *William Wallace.*

*J. M.*

*Fol. Dic. v. 3. p. 344. Fac. Coll. No. 126. p. 300.*

1764. February 22.

MILLER against BREBNER, &c.

No 86.

A process against debtors within the same sheriffdom, each of them for a sum under 200 merks, is not competent before the Court of Session in the first instance.

A MAN having several debtors within the same sheriffdom, not one of whom owed him to the extent of 200 merks, thought proper, notwithstanding, to convene them all in one process before the Court of Session, and obtained a decree in absence. This decree being suspended, the following interlocutor was pronounced at discussing the suspension: "In respect that the suspenders, though living within the same jurisdiction, were called before the Court of Session *prima instantia*, for payment of sums, each of them under 200 merks, though above 200 merks upon the whole; therefore, suspend the letters *simpliciter*, and decern; reserving to the charger to insist, as accords, before the inferior Court."

*Sel. Dec. No. 215. p. 280.*