1762. ANN INCH *against* The JUSTICES of PEACE and CONSTABLES of ROXBURGHSHIRE.

WHEN members of any court are guilty of malversations or excesses, in discharging their duty, the judges by whom they are appointed seem, *in prima instantia*, the proper judges to try and punish them. This point occurred as to certain constables of Roxburghshire, Winter Session 1762, in executing a warrant of the Justices: they had been charged with abuse and riot; for which, being pursued before the Sheriff, he decerned for damages and expenses.

An appeal being taken to the Circuit, the Lord Minto, thinking the point of importance, certified it to the Court of Session.

An executor who had administered a will in Jamaica, and found caution to account there, was arrested in this country, by an order of the Sheriff, until he should find caution *judicio sisti*, in consequence of an oath, emitted by a creditor of the defunct, that he believed him to be *in meditatione fugæ*. The Court set him at liberty, and were of opinion, that, though he was a native of Scotland, no action could lie against him here *executorio nomine*. And, in an action of oppression and damages, on account of this imprisonment, the action was sustained, and they found him entitled to damages and expenses.

See 11*th July* 1754, *Mrs Burrows* against *S. Arch. Grant*.

By the turnpike Act for the county of Ayr, the trustees are empowered to lay out the roads, &c.; and parties aggrieved are allowed to appeal from their sentences and resolutions to the Justices of Peace at their Quarter Sessions; "Every such appeal to be there heard and determined, and the order to be final and conclusive."

In a reduction of a resolution of said trustees, concerning the way of leading a road from Monkton to St Quivox; the Lord Monboddo, 22d July 1776, found, "That, as it did not appear that the trustees had exceeded their powers, the present action was not competent before this Court." And, on a petition and answers, the Lords adhered.

The Lords thought that the only remedy was by appeal to the Quarter Sessions, and that their order was final. To the Lords there lay no appeal.

1778. *March* . JAMES CHALMERS *against* CAPTAIN NAPIER.

BY the Act 1681, maritime causes cannot be carried from the Judge-Admiral by advocation. But then the question frequently occurs, What causes are properly maritime causes? Captain Napier, regulating captain at Leith, having, by one of his parties, in a boat, in the Frith of Forth, impressed Gregory, apprentice to James Chalmers, merchant,—Chalmers applied to the Judge-Admiral for redress, and to get back his apprentice. The Judge sisted proceedings until Chalmers should apply to the Lords of the Admiralty. Of this,

Chalmers complained by bill of advocation: Napier objected that the cause was maritime, and the bill incompetent; but the Lords were of a different opinion; they thought the cause not maritime. It is not the place where a crime is committed, or where the ground of action arises, which makes a cause maritime or not maritime; the criterion is the nature of the case itself. In this they were unanimous. The point was well treated, both in the papers of this cause, and of another betwixt the same Captain Napier and one Walker at Fountain-bridge, for impressing a man above 55 years of age. This last received no decision, the affair having gone off.

In the case of Chalmers, some of the Lords, particularly Lord Kaimes, thought the interlocutor of the Judge-Admiral a *denegatio justitiæ*, and that thereby the question, about the cause being maritime or not, was superseded.

See a very early case in the Books of Sederunt.

1778. *March 5.* JANET SCOTT *against* WILLIAM OLIVER.

JANET Scott having pursued William Oliver, before the Justices of the Peace of Roxburghshire, for the aliment of a bastard child, of whom, as she alleged, he was the father; the Justices decerned for the aliment: which Oliver suspended, *inter alia* denying the jurisdiction. The Lord Stonefield, Ordinary, turned the decreet into a libel; and although this in some sort evaded the question about the jurisdiction of the Justices, yet, in a reclaiming petition, the point having been argued, the Lords disregarded the objection, and held, from practice, the jurisdiction to be sufficient.

WHERE petty delicts are tried by inferior judges, without a jury, the Lords of Session have power to review the sentence by way of suspension: but, if there was a verdict of a jury, the suspension must go to the Justiciary. This seems to be the criterion. So thought, 4th December 1764, in a suspension brought by a woman banished furth of Scotland for three years by the Sheriff of Lanark for theft.

1778. *July* . MAIR *against* SHAND.

THE Lords have sustained their own jurisdiction in actions for damages, in the first instance, for *verbal injuries*, and also for injuries of a *mixt nature, verbal and real*, also in the first instance, (for, in the second instance, there can be no question.) But Shand having thrown a punch-bowl at Mair in the