

No 305. lost by the fraud, was not found competent to be insisted in before the Court of Session, but before the Exchequer. See APPENDIX.

*Fol. Dic. v. 1. p. 507.*

1743. *January 27.*

MITCHEL *against* The COMMISSIONERS of Excise, and BERVIE.

No 306.

Competitions with writs of extent are cognizable only in the court of exchequer.

JAMES STARK, collector of excise at Kirkcaldy, according to the usual way of collectors remitting the public money, gave L. 200 Sterling to John Bervie merchant in Kirkcaldy, for which he got a bill, drawn by Bervie upon Patrick Manderston merchant in Edinburgh, payable to the commissioners of excise. Shortly after Manderston's acceptance, his affairs going into disorder, his creditors arrested and pursued furthcomings before the Sheriff of Edinburgh, in which the commissioners appeared and produced an extent, comprehending the debts owing by the arrestees; and the Sheriff having preferred the Crown, the arresters presented a bill of advocation, which the LORDS found 'incompetent; and therefore refused the desire of the bill.'

*N. B.* The Sheriff had expressed his interlocutor wrong, when thereby he 'preferred the commissioners.' What he should have done was only to refuse to give decree of furthcoming in respect of the extent; but he was in the right in the main, and the application of the arresters should have been to the Exchequer, and not to the Court of Session; for all competitions with extents are only cognoscible in Exchequer.

*Fol. Dic. v. 3. p. 256. Kilkerran, (JURISDICTION.) No 2. p. 306.*

1747. *July 17.*

RAMSAY *against* ADDERTON.

No 307.

Trials for seizure of smuggled goods are competent only in the Court of Exchequer.

IN August 1743, Richard Adderton, surveyor of the customs at Ayr, made a seizure there from John Ramsay in Largs, of three casks of brandy, as being carried without a permit; of which Ramsay brought a complaint before the Justices of the Peace, wherein he set furth the fact as follows: That he having some days before purchased the said casks, lying at Largs, a place near Ayr, shortly after the same had been duly condemned, Mr Mollison collector of excise at Ayr agreed with him for carrying them to a friend of his at Edinburgh, and gave him a letter to be delivered to his friend, acquainting him what price he was to pay; that when he came to carry the casks from Largs, Alexander Bennet the excise-officer, under whose survey the Largs is, happened to be gone to Ayr, and as he the complainer was to pass through Ayr in his way, and did not suspect any inconveniency, having the collector's letter

open in his custody, he brought along the three casks to Ayr, where he proposed to get his permit; that being challenged at Ayr by Peter Miller waiter, he told him the fact as above, who, notwithstanding, seized them, in regard there was no permit, and carried them to the custom-house; that upon this he applied to the Justices of the Peace; and having got Alexander Bennet the officer, under whose survey the spirits had been, to go to the custom-house, and after inspection, to acknowledge that they were the same that had been under his survey, and had been lawfully purchased by the petitioner; the Justices ordained Miller to restore the spirits, but at the same time decerned the complainer to pay six shillings Sterling to Peter Miller, on account of the trouble and expence he had been at in making the seizure, occasioned through the complainer's want of a permit; which being accordingly paid in the custom-house, in presence of the collector of the customs, the comptroller and his clerk; when Peter Miller was about to deliver the spirits, Richard Adderton the surveyor had interposed and seized them *de novo*; he therefore craved the Justices might ordain Adderton to allow him to take the casks.

Mr Adderton having in obedience to the citation compeared before the Justices, and declined their jurisdiction, as the matter was only cognoscible in Exchequer, they repelled the declinator, and allowed the complainer to prove the fact as laid in his complaint. And he having proved that the spirits were the same he had purchased, and which Peter Miller had been decerned to deliver up to him, and that he had paid the six shillings to Miller as set forth in his complaint, the Justices decerned the spirits to be delivered up to the complainer, or L. 7: 16: 0 Sterling as the value, and condemned Mr Adderton in L. 4 Sterling in name of damage and expence; and his appeal to the quarter-sessions having been dismissed as incompetent, he brought the case before the Lords by advocacy.

At discussing the advocacy, the Ordinary found, 'That the Justices of the Peace had no jurisdiction in this case, and advocated the cause;' and also 'Found the cause incompetent before the Lords, and dismissed the same;' and, on representation and answers, 'found, that as nothing of its nature criminal, nor any irregularity whatever was alleged in the complaint against the officer, other than what is by the complainer supposed to arise from the bare act of seizure complained of, the same was not competent before the Justices of the Peace, and that neither was it cognoscible by the Court of Session, and adhered to his former interlocutor;' and on advising petition and answers, the LORDS 'Adhered.'

The ground of this judgment was, that by the constitution of Scotland, by the act of Union, and that of the 6th of Queen Anne, establishing the Court of Exchequer, the sole and exclusive jurisdiction in all matters touching the revenue, and particularly touching the legality or illegality of seizures is vest-

No 307.

ed in the Court of Exchequer; and though by a subsequent act, 6th Geo. I. jurisdiction is given to the Justices of the Peace to condemn foreign spirits, where the quantity seized is within 63 gallons; yet *imo*, That is only where the issue to be tried is for unlawful importation; *2do*, Where the prosecution is brought at the suit of the officer; who may still, if he pleases, file his information in the Court of Exchequer, whose original jurisdiction still remains. The statute proceeds on the recital, 'that his Majesty's officers, who seize foreign spirits, are under great discouragements from the trouble and expense they are forced to be at in procuring the same to be condemned in Exchequer;' and therefore enacts, 'that the seizure may be proceeded upon by two Justices of the Peace, who are authorised and empowered to call the persons before them, in whose custody the spirits were found at the time of the seizure, &c.' But no power is given to the smuggler to complain upon the officer, the legislature having foreseen the danger of giving the smuggler a power to bring the merits of the seizure to be tried before any two Justices of his own choice; and further than the statute goes, the Justices have no jurisdiction.

It is true, where the act of seizure is attended with a riot, the Justices of the Peace, as Judges in riots, may cognosce upon the riot; and it will be no defence that the person complained on was an officer making a seizure; but of the legality or illegality of the act of seizure itself they cannot cognosce, but in the particular case wherein the law has given them jurisdiction.

And whereas it had been proved in this case, that the spirits had been condemned and bought from the officer; and upon that proof, Peter Miller, the first seizure maker, had been ordered to restore them; and that it was thence argued, that this was not a question, which any ways concerned the revenue, but a complaint of an illegal and oppressive act in making a second seizure; and the question being asked, whether had the spirits been attended with a formal permit, the Justices might not have proceeded on it as a riot? It was *answered*, that what might have been the case, had there been a permit, there was no occasion to say, but as there was no permit, it was certain the Justices could not try that issue, whether or not these were the spirits which the complainant had purchased, and for which the permit was to have been granted.

*Fol. Dic. v. 3. p. 356. Kilkerran, (JURISDICTION.) No 3. p. 308.*