

witness said, that Sir John, after his nose was squeezed, put his right hand towards his sword when he was gripped. We then removed them to consider of the case, and at removing, Sir John left a signed paper begging pardon of the Court, and wishing no further censure might be inflicted on Mr Brown; and a little after Mr Brown sent in a paper much of the same sort. In advising, it was agreed that before resolving on the censure the President should acquaint Sir John, that it was expected that of himself he should ask pardon of Mr Brown of the injurious expression, and promise that he would retain no further resentment of what had passed, and as the promise was made in face of Court they would look on it as made upon honour, though that was not a style the Court used; and that Mr Brown should be acquainted the Court expected that of himself he would ask pardon of Sir John, and make the like promise. Sir John said, "If the Court would order him he would do any thing in obedience to their order, but had nothing of himself to acknowledge;" and after being again and again pressed, he said to Mr Brown, "Since the Court desires it, I in obedience to them beg your pardon;" and Mr Brown immediately answered in substance, "That he was sorry for what had happened, and since you beg my pardon I also beg your pardon, and if Sir John is willing to promise that there shall be no more of it, he was ready on his part to make the like promise;" but Sir John, after a good deal of speaking, refused to make any promise; and thereupon as it was then two o'clock, and the Court of Teinds to be held, we remanded Sir John back to prison, and only ordered Mr Brown to appear to-morrow at ten o'clock. And 12th January Sir John and Brown both promised to keep the peace, and thereon we pronounced sentence, fining each of them in 500 merks to the poors' box, and each of them to find bail with one or two cautioners, under the penalty, to keep the peace both in general and with one another for two years, under the penalty of L.500 sterling, to be paid in case of contravention to any of our clerks, to be disposed of as the Court shall direct.

No. 50. 1749, Dec. 13. FRIENDLY INSURANCE COMPANY *against* THE ROYAL BANK.

IN this question so many of the Lords were concerned in the Bank and Insurance Office that there did not remain a Court, and therefore we would not allow them to decline themselves; nor the Justice-Clerk, although an Extraordinary Director of the Bank; but we allowed Lord Milton the Deputy-Governor to decline himself.

No. 51. 1750, Jan. 5. COLLECTOR SHAW *against* COLLECTOR GROSSET.

AN action at Collector Shaw's instance against Grosset for a half of the prosecutor's share of certain seizures of tobacco as first discoverer on the act 21 *Geo. I.* § 7. was found not competent in this Court, and therefore the process dismissed.

No. 52. 1750, July 28. JOHN DUNLOP *against* KENNOWAY.

NINETY hogsheads of lintseed imported from Holland being seized and condemned by the Justices of the Peace of Stirlingshire as insufficient for sowing, and imported contrary

to the act 13th Geo. II., and a bill of suspension being offered, for that the Justices are only made judges for such seed as offered to sale; 2dly, That it is only in that event that any penalty is imposed, but neither penalty nor forfeiture on the bare importation; 3dly, That the seed was discoloured by a tedious passage, but offered to prove by making the experiment that it was sufficient even for sowing. But the Lords found the bill not competent before them and therefore refused it. But the President thought the Quarter Sessions might yet receive an appeal.

No. 53. 1751, Jan. 16. THE DUKE OF ATHOL, &c. *against* MURRAY.

GROSSET employed his servant Murray to receive the customs for him, and after he had done so for some time, Bisset and one Edwards became securities for him by a bond for L.500 to the King; the condition was, that he should faithfully account to Grosset for duties received or to be received by him; and some time thereafter Murray having died, Bisset and Edwards gave a new bond also in the King's name for L.1000, whereof the conditions were the same; and Murray counted often, and there was always a large balance in Murray's hands, and in 1745 the balance was above L.1100, when Grosset dismissed him, and took out extents out of Exchequer against Bisset and Edwards on the last bond. They applied several times to have them set aside by the Barons, which was refused; and at last the Duke of Athol being it seems bound by paction to relieve Bisset, there were sundry communings, and at last Bisset paid L.500 to Grosset and got a total discharge; but as Edwards had not the money he put in a plea of conditions performed, and Grosset (or rather Lord Advocate) put in a replication assigning a breach of conditions, and Edwards put in a rejoinder, so that issue was joined as early as 1747, and before that time (it was said) Grosset had paid up the balance due by him to the Crown, at least had in payment of that and subsequent collections paid more than the balance amounted to when he dismissed Murray. Then the Duke of Athol, Edwards, and Bisset, pursued reduction in this Court of the said bonds to the Crown, wherein they called the Officers of State, alleging that they were fraudfully induced by Grosset to sign the bonds; and 2dly, That his accounts with Murray were fraudulently made up, and concluded that the bonds being reduced, the L.500 paid by Bisset should be restored. And about the same time this reduction was raised, Grosset pursued an adjudication of Edward's estate, wherein the reasons of reduction were repeated as defences. In the reduction Grosset objected to the jurisdiction, first on the Exchequer act *Svo Annæ*, and 2dly, on the *lis pendens* in Exchequer by the issue joined. On the Ordinary's report for advice, we first repelled the declinature, but on reclaiming bill and answers we appointed a hearing in presence, and then informations, which were this day reported by the President. It was answered to the objection, that Murray had no deputation, nor had Grosset power to give him any, and therefore the bond was unwarrantably taken in the King's name; 2dly, That though it had been warrantably taken, yet if it was extorted by force or elicited by fraud, the party injured must have his remedy at common law, and if violence had been used it could have been tried in the Justiciary and damages given; 3dly, That now the Crown being paid by Grosset the Crown had no interest in the question, and it ceased to be a revenue debt; 4thly, Grosset had acknowledged the jurisdiction of this Court by his pro-