

1747. January 23.

COTTS against Dore.

No 75.

WHERE a burgh falls from its right of election of a magistracy, and is again restored by the Crown; found that the Lords of Session were competent Judges of wrongs done at such elections.

Fol. Dic. v. 3. p. 343. Kilkerran, (JURISDICTION.) No 6. p. 318.

1748. November 28.

LANG and BURGESSES of SELKIRK against The MAGISTRATES.

No 76.

A VERY elaborate argument, tending to shew that private burgesses have neither *title* nor *interest* to pursue their Magistrates for misapplication of the burgh revenues, is to be found in this case. (No 21. p. 2515, *voce* COMMUNITY.) THE COURT pronounced opposite judgments; but, before a final decision, the suit was compromised.

Fol. Dic. v. 3. p. 341. Rem. Dec.

1749. January 10.

COUTTS and COMPANY against RAMSAY and STEWART.

No 77.

It was found not competent to advocate a process from the Conservator's Court at Campvere; and in the reasoning the Lords seemed to be very doubtful, whether or not in the case of the Conservator's committing iniquity, there lies any remedy; or if there did, they were not ready to say what it was; but were clear, that it lay not in the Court of Session, as they had no jurisdiction over any court not held within the kingdom.

Fol. Dic. v. 3. p. 343. Kilkerran, (JURISDICTION.) No 8. p. 320.

1751. January 16.

BISSET and EDWARDS against WALTER GROSET.

No 78.

WALTER GROSET, collector of the customs at Alloa, having employed John Murray, who had been his servant, to collect for him some part of the duties, fitted an account with him, 14th June 1740; whereby Murray acknowledged a balance as then due by him, of about L. 900 Sterling.

John Murray, with Thomas Bisset of Glenelbert and Alexander Murray of Ladywell, 3d March 1741, granted bond to the King for L. 500 Sterling, with a condition, reciting, 'That Walter Grosset, being collector at the said port, had deputed and appointed, and thereby did depute and appoint the said John Murray to act under him as his depute or clerk, with a salary of L. 20 yearly, &c. if therefore the said John Murray should faithfully attend his

An action was raised in Exchequer, upon a bond due to the Crown. The debtor gave in defences, and also brought a reduction of the bond before the Court of Session. Found, that so long as there was a dependence in

No 78.
Exchequer,
the Court of
Session had
no jurisdic-
tion.

‘ service, in execution of the said deputation or clerkship ; and should well and truly pay and deliver to Walter Groset, all such duties or sums of money as he had already received and collected, or should thereafter receive and collect, then the obligation should be void.’

Murray of Ladywell having died, John Edwards of Solsgirth, and Mr Bisset, 13th July 1743, became bound with John Murray, as collector-depute or clerk in the Port of Alloa, in L. 1000 on the like condition.

Mr Groset and John Murray fitted accounts from time to time ; and *lastly* 25th October 1744, whereby the balance in Murray’s hands came to be about L. 1000 Sterling.

A writ of extent in the King’s name, but in Mr Groset’s behalf, who, as was alleged in this cause, and the question argued on that supposition, had paid the money to the Receiver-General, was issued out of the Court of Exchequer March 1744-5 ; and 12th July 1745, Mr Bisset, on payment of half the sum to Mr Groset, obtained a discharge.

A fresh writ, 3d November 1747, was issued against Mr Edwards ; to which he appeared, and *pleaded* conditions performed.

Mr Groset pursued an adjudication of Mr Edwards’ estate ; to which he *answered*, the bond was obtained by fraud and circumvention, Mr Groset having artfully represented his servant as a person fit to be entrusted, and for whom his friends might reasonably exert themselves ; and one for whom he was himself to do great things, if he could obtain them to bind for him ; when he was either owing him so great a sum, as by the balance of the first account appeared, or they had made up fallacious accounts, as the defender rather suspected ; which they carried on, from period to period, transferring the balance, in order to make it a charge on the bailsmen ; and both Solsgirth and Glenelbert raised a reduction of the bond, and all fitted accounts, calling therein the Officers of State.

Pleaded for Mr Groset the defender ; This cause is only competent to be tried in the Court of Exchequer ; by an act *6to Annæ*, a Court of Exchequer is established in Scotland, under the jurisdiction of which is put all revenues of the Crown, all remedies for recovering the same ; all obligations and securities touching it, and prosecutions concerning them : It is also enacted, That all obligations and securities for any of the revenues or debts due to the Crown, or concerning or relating thereto, or any of the officers thereof, or taken by order of the Court of Exchequer, for securing any of the revenues or debts of the Crown, should be taken in the name of, and to be paid to the Queen’s Majesty, her heirs and successors ; and should have the full effect of any obligations which might be taken and acknowledged in the Court of Exchequer in England, according to the purport of the statute 33 Hen. VIII. or any other law or practice in the said Court, and that all suits, on any of the said obligations, or for revenues or debts due to the Crown, should be in the Court of Exchequer in Scotland : The Barons are also authorised to hold plea in equity, by

English bill, petition, or suit, by or against the Advocate-General in behalf of the Crown, or any other person any ways concerned in any of the revenues or debts, touching the said revenues or debts, for any discovery or relief in equity; and that any party to a judgment in this Court, may bring a writ of error returnable to the Parliament of Great Britain. The cause is already pendent before the Court of Exchequer, by the plea of conditions performed, put in by Solsgirth, and is only competent there; nor is there any instance of the other courts of law in England meddling in matters proper for the Exchequer; of which the Chancery itself has been very tender, Vernon's Reports, vol. 2. f. 426, *Sandies versus Trant, anno 1701*, 'Plaintiffs, as assignees under a statute of bankruptcy, pray an account of the estate of Hind the banker, seized by the defendants, on pretence of debts owing to the King, by virtue of several extents, sued out to that purpose; viz. one original extent for the King, and two other extents in aid, by the defendants, who are farmers of the Excise.'

'It being objected that this matter was properly cognoscible in the Court of Exchequer, which was the King's Court of revenue; and that this Court could not examine what was the *quantum* of the debt due to the King, or how far the extents were necessary; the Lord Keeper allowed the objection, and dismissed the bill.'

The present case is stronger than this, where the defendants were in possession of the estate; and an account was only prayed, that it might appear if there was any residue, after paying the King; but the Chancery refused to try this, because it could not be done without examining the *quantum* due, and how far the extents in aid were necessary, which were both proper to the Exchequer; here the extent is directly for the King, and not in aid; but it would not have made any difference if it had; as suppose Murray had granted no bond to the King, but an extent had been taken out against Mr Groset, to whom he by inquisition was found indebted, and thereon, an extent, in aid, taken against him: It is ordinary for the officers to take security, for those who are employed under them, directly to the King, in terms of the statute Henry VIII. Lillie's modern Reports, f. 419. the King *versus* Yale. Yale and Kirkwood gave bond to the King for L. 40,000, conditioned, whereas Pauncefort, Receiver General, had agreed to employ Kirkwood, to receive for him sums of money, on account of the revenue of Excise; if therefore the said Kirkwood should true account make with the said Pauncefort, of all such sums of money, and truly pay him all such sums as he Kirkwood should have received relating to the said revenue, then the obligation should be void: On the failure of Kirkwood, a suit was brought in the King's name against Yale; and the bond was held good, and entitled to the privileges of the statute Henry VIII. The present case is similar, nor is the pursuer's ground of action, that they were fraudulently induced to grant the bond, of any force to bring the cause before

No 78.

another court ; as were there ground for the allegation, they might be relieved by a bill in equity to be preferred to the Court of Exchequer.

Pleaded for the pursuer ; The Court of Session has a general jurisdiction to give relief against all frauds ; and if the defender declines it, he must show that in this case it is incompetent ; it is granted the Court of Exchequer is erected on the same plan with that in England ; but it will not follow the practice of that Court will determine what may be brought before it here ; as it is ordinary to bring before it there many improper causes ; and persons, by the fiction of being themselves the King's debtors, are in use to recover their own debts ; in the case of the Earl of Newberry, 1. Vernon 229, Cases in Equity abridged, a mortgagee brought a bill in Exchequer, to foreclose ; the mortgager brought a bill in Chancery in redeem ; the mortgagee *pleaded* the former bill depending : This was over-ruled ; which the Chancellor justified, for that the Exchequer was but a private Court, and its jurisdiction for getting in the King's revenue ; and if there should happen any inconveniencies, from clashing of jurisdictions, there were precedents of injunctions that have gone to the Exchequer. The Court of Chancery is only proper for cozens, frauds, and deceits, for which there is no remedy by the course of ordinary law, Coke's *Instit.* part 4. c. 8. f. 84, and the same matters by the law of Scotland belong to the Court of Session. The Exchequer, indeed, by the 33d Henry VIII. may discharge all bonds to the King, on proof of payment and performance ; and if any person, of whom a debt is demanded, allege and prove sufficient cause in law reason or good conscience in discharge of the debt, may allow the proof, and discharge such person ; and the Court in Scotland has the same powers by the act *6to Annæ* ; but this will not be sufficient to take the cognition of this cause from the Court of Session, and lodge it in the Exchequer, unless there were a debt due to the King, and he concerned in the question ; for in the case cited of Pauncefort *versus* Yale and Kirkwood, Pauncefort had bound Kirkwood to account to him for his own moneys as well as the King's ; and so far it was found the bond to the King was improperly taken, and could not be effectual. Mr Groset had no power to appoint any deputy, and never gave Mr Murray a Deputation, which is one article of fraud ; and though perhaps the King might avail himself of this bond, whether properly or improperly taken, if there were a debt due to him, yet he has no concern when Mr Groset has paid the money. Mr Groset has brought an adjudication on this bond ; and cannot decline the Court's taking cognition thereof, which is necessary to determine whether they will adjudge or not. There is no dependency of this question before the Court of Exchequer ; for in the issue joined on the plea of conditions performed, relief cannot be obtained against the bond, on account of fraud ; relief can only be had here ; for a bill in equity in Exchequer is only competent in revenue matters, which this is not ; neither could full relief be had there, as the effect of a bill would only be to set aside the bond, in so far as not paid, but not to

decree repetition. The defender insists that the Court of Session cannot reduce the bond granted to the King; but allowing it to be so, in so far as he is concerned, the defender is still liable in damages, for having fraudulently induced the pursuers to grant such a bond, as any other person not concerned in the revenue would have been, that had concurred in the fraud; an action for reparation would have lain against such person before this Court; and so it lies against the defendant; and the pursuers now insist for reparation.

Replied, The bond was properly taken to the King, for public money to be intrusted with, whether Murray was properly an officer, or had a deputation or not; but this very question of the bond's being properly or improperly taken is only competent in the Exchequer, where full relief may be had; for though in a question with the King, it would only be competent to set the bond aside, in so far as already not implemented; yet Mr Grosset may be liable in damages and repetition. Mr Grosset is not now insisting for an adjudication; and when he does insist, it may be proper to object to the bond. The present action is a reduction of a bond to the King, which is not competent; when a petitory action for reparation of damages is brought, it will be time to answer it; even that will not be competent against this defender, though it would be against a partaker in the alleged fraud, for he could not be brought into the Exchequer; but the action against Mr Grosset lying there, to bring it here, might make a collision of jurisdictions: As part of the reasons of reduction of the bond and accounts, is an allegation Murray did not owe so much; this falls under the issue of conditions performed; and so far the cause is in dependence.

THE LORDS found that the Court had no jurisdiction to proceed so long as there was a dependence in the Court of Exchequer.

Act. *Leckhart.*

Alt. *Advocatus.*

Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. p. 340. D. Falconer, v. 2. No 182. p. 218.

1751. February 12. GORDON of Invergordon, against GORDON of Embo.

SIR JOHN GORDON of Invergordon having, in the year 1748, applied to the Michaelmas head court of the shire of Sutherland, to be enrolled on a wadset granted him by the Earl of Sutherland, was refused; and thereupon complained to the Court of Session against Sir John Gordon of Embo, whose objection to his title was sustained.

Answered; Among other things not now determined, the objection was good, in regard he did not instruct his valuation to the Court; and whereas he produced a disjunction of his lands, in value, from the remanent estate of the Earl of Sutherland, this cannot be regarded, as it is erroneous, and proceeded without any legal or proper evidence of the real rent, either of the wadset lands, or of the Earl of Sutherland's estate.

No 79.

When the proceedings of the Commissioners of Supply in dividing valuations, come in question before the freeholders in canvassing titles of enrolment, and from them before the Court of Session, they are subject to review.