

No. 59. 1752, Dec. 19. THOMSON *against* STRAITON.

SOME Excise officers, on a warrant to search, having broken open cellars and seized four hogsheads of white wine, which are not exciseable, but under the Customs, and were condemned in Exchequer for not paying duty, Straiton sued the officers before the Justices of the Peace for damages, and charged certain other irregularities in the seizure. —The cause was advocated, and it was objected that this could only be tried in Exchequer. Answered, that before the act 9th Geo. II. the manner of seizing was part of the issue tried in Exchequer, and then indeed there might be danger of collision of jurisdictions, but since that act, that is no part of the issue there, and therefore triable as any other injury. Drummore found the process competent;—but on a reclaiming bill and answers, we agreed to supersede till we should have a conference with the Barons.

No. 60. 1753, Jan. 31. BRUCE *against* FRENCH, Procurator-Fiscal.

A person who had qualified to the Government several times since 1745, and once particularly as Baron Bailie to one Gentleman, and lodged his certificate of his having done so in the Sheriff-Court of Aberdeen in terms of the jurisdiction act, was afterwards employed as Baron Bailie by another Gentleman and neglected to qualify again, for which being sued the Sheriff fined him in the statutory fine of L.10, which he suspended, because he had already qualified as Baron Bailie to another Gentleman and lodged his certificate. The question was reported to us by Lord Minto, and we suspended the letters *simpliciter, renit.* President. 20th February, Adhered, and refused a bill without answers.

No. 61. 1853, Aug. 7. AUCHINCLOSS, &c. *Supplicants.*

See Note of No. 4. *voce* EXECUTION.

No. 62. 1753, Dec. 11. JUSTICES OF PEACE OF FIFESHIRE, *Petitioners.*

LAST week a petition was presented to us from ten or eleven of these Justices, mentioning a complaint of a riot brought before them against some Excise officers who had broken into a house belonging to General Sinclair, and justified themselves by the pretence of a writ of assistance from Exchequer, and a deputation to two of them to act as officers of Customs, that a writ of *certiorari* from the Exchequer for removing that process into the Court of Exchequer was served upon them, and that when thereafter they pronounced sentence fining the defenders and committing them to prison till payment, the Court of Exchequer had issued an order to the keeper of the prison to set them at liberty, and praying relief from us, and containing also sundry expressions not at all respectful to the Court of Exchequer. We thought proper to take the petition under consideration with shut doors. Several disapproved of what the Exchequer had done, for that a process of riot was truly not within their jurisdiction, and therefore though we had no jurisdiction over them, proposed that we should desire a conference. Others *inter quos ego* were of

the same opinion as to the point of jurisdiction. But as every Court must judge of its own jurisdiction in questions coming regularly before the Court, and in this the Court of Exchequer must judge of their own jurisdiction, and we had no power to review or alter their jurisdiction, we could give the petitioners no relief, though the Court of Exchequer should differ from us; and as this process was not brought into this Court we could give no judgment in it, nor could we regularly take notice of the proceedings in Exchequer; and therefore thought we should refuse to receive this petition, and thought that it was not a proper occasion of desiring a conference. At the same time we thought it was of great importance to both Courts to have the point of jurisdiction settled, and were therefore desirous to have a conference, and I took notice that in a case extremely similar to this, viz. Straiton of Laurieston against Thomson and other excise officers, we had 19th December last superseded the decision of the question of our jurisdiction till we should have a conference with the Barons, for which end a Committee was then named, but through the late President's indisposition and death it had never gone further; and therefore proposed to renew the former order, and to desire the conference upon the subject of that process without taking any notice of this petition. The Court agreed to this motion, and the former order was renewed on Thomson's petition against Straiton, and as I happened to be then in the chair I was ordered to acquaint the Barons, and I sent clerk Gibson to Baron Maule as an *amicus curiæ* to acquaint him of what we had done, and to ask his opinion of the proper method of giving that notice; and the clerk reported, that after conferring with the Barons, he said that the last conference that they had demanded with us, (which was on the subject of the principality) they sent the King's Advocate to acquaint Lord President, and since he was not now here we ought to send one of the solicitors. We doubted whether they were bound to carry the message, but the point of form was not worth disputing, and they were willing and were sent both, and the Barons agreed to the conference. But clerk Gibson had before insinuated that it was doubtful if our message had been on the subject of the Justices petition whether they would have agreed to any conference. Then we delayed till this day the further consideration of the Justices petition, (the doors still shut as before, only the two lawyers Messrs Lockhart and Elliot present) whom we heard at the Bar in justification of the expressions in the petition, and they declared they did not mean to give offence. But they thought it of great importance that such causes should not be brought into Exchequer, which Court behoved to judge according to English law, whereas our laws in Scotland were still preserved in matters that did not concern the revenue;—after which they were also removed, and the Court agreed to refuse to receive the petition; that there were sundry expressions in it not respectful to the Court of Exchequer, and which were the petition to go into the record behoved to be delete or varied. But as the petition was not to be received, it was only necessary to acquaint the lawyers that the Court was dissatisfied with it, and to caution them against such petitions in time coming. And then the door being opened and the lawyers called, Justice-Clerk, who is President this week, cautioned them accordingly.