

having, on a warrant to search, broke open his cellars, and seized four hogsheads of white wine, which were not exciseable, but under the customs, and were afterwards condemned in Exchequer for not paying the King's duty, and for certain other irregularities in the seizure. The Excise officers suspended, and alleged that this question could only be tried in Exchequer. Answered, That before the act *9no* Geo. II. there might have been some hazard of a collision of jurisdictions, because before that act the manner and lawfulness of the seizure was part of the issue tried in Exchequer; but now the manner of seizing is no part of the issue in that Court, and therefore any injury committed in making the seizure, may be tried in the same way as any other injury. Lord Drummore found the process competent, but on reclaiming bill and answers, we superseded till we might have a conference with the Barons of Exchequer.

No. 59.

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1753. *January 31.* BRUCE *against* FRENCH, Procurator-Fiscal.

No. 60.

ONE who has in terms of the jurisdiction act once qualified by taking the oaths as Baron Bailie of one Barony, and lodged his certificate in the Sheriff-Court,—not bound to qualify again as Bailie of another Barony in the same shire;—and one being fined L.10 by the Sheriff of Aberdeen for not having so qualified a second time, we suspended the letters *simpliciter*.

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1753. *August 7.* AUCHINCLOSE, &c. *Supplicants.*

No. 61.

A SHERIFF-OFFICER and two Commissary officers who made a false execution, the one as officer and the other two as witnesses, bearing, that the execution was in their presence, though they were not present, were, in respect of their ingenuous confession, sentenced only to be put upon the pillory at Glasgow.

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1753. *December 11.*

JUSTICES OF PEACE OF FIFESHIRE, *Petitioners.*

No. 62.

A PETITION was presented to us in the name of ten or eleven Justices of Peace of Fifeshire, showing, that they had convened before them two Excise-officers, who had broke into General Sinclair's house, and justified what

No. 62. they did by the pretence of a commission to two of them to act as officers of the Customs, and a writ of assistance from the Exchequer; that a writ of *certiorari* from the Exchequer had been served on these Justices to remove that process into the Court of Exchequer; that they having thereafter fined the defenders and committed 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. As we had no jurisdiction over the Exchequer, we thought that we could not receive this petition. *Vide* the proceedings upon it. (NOTES.)

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1753. December 18.

The DUKE of DOUGLAS *against* TWO JUSTICES OF PEACE.

No. 63.

IN a question betwixt the Duke of Douglas and two Justices of Peace, reported by Lord Kilkerran for advice, the Lords found, that the 44th act 24. Geo. II., for rendering Justices of Peace, &c. more safe in the execution of their offices, extends to Scotland as well as England, though the procedure must be according to our forms, 28th July 1752. And on a reclaiming bill and answers, they found, 19th December, that it did extend to Scotland, but as the fact charged was a wilful transgression, and collusive, they found that this action did not fall under the act. But, upon another reclaiming bill and answers, it was observed, that it was impossible that any action could in Scotland be brought in terms of that act but before the Court of Justiciary, where alone the Justices of Peace could be tried by a Jury; that no action could be brought without giving previous notice, and if an amends was offered, it must be tried whether that amends was sufficient, and that by the act could only be tried by a Jury, and not by any Court of law; and as the Legislature could not mean without express words, to make such an alteration of our law and of the jurisdiction of this Court, no part of the act could extend to Scotland, if it was not the last clause limiting the action, and that it was impossible to separate that clause from the act: And as to the second part of the interlocutor, that the preamble of the act proposes a remedy for all sorts of transgressions, not only innocent and through ignorance, but wilful and oppressive, and the rest of the act is calculated to answer both; and the limitation in the last clause is of all sorts of actions against Justices of Peace, and the defenders' transgression in this case could not possibly be worse than what is mentioned in the preamble, and therefore if the act extends to Scotland, that they were entitled