

No 39.

election appointing Mr Watson assistant-clerk to Mr Taylor, during his life, should be reduced, and decerns, and appointed both parties to give in memorials on the point, how far the Convenery Court are entitled to name Mr Watson clerk to the Trades, after Mr Taylor's death, or, if they can appoint a clerk, but in the case of the actual vacancy of the office.'

Mr Taylor gave in a representation against that part of the interlocutor, which sustained Mr Watson's election as assistant-clerk, to which answers was made, and memorials given in on the point not determined; and the Lord Ordinary, 'Having considered the representation for the pursuers, and answers, with the mutual memorials, upon the point not determined by the interlocutor, and specially, that it is admitted to have been the custom for above 40 years, for the Convenery Court to have persons fixed for succeeding the clerk in possession, in the event of his death, which may be attended with convenience, as it is an office of trust, and proper to be discharged by a person who has been called upon particularly to make himself acquainted with the duties of it, sustains the defences, and assoilzies.' And to this interlocutor his Lordship adhered.

A reclaiming petition was presented to the Court for Mr Taylor, upon advising of which, with answers, the Lords, 17th July 1767, 'found the Convenery Court had no power to conjoin an assistant with John Taylor, in the office of Clerk to the Trades of Aberdeen, during his life, and, therefore, reduce the act of the Convenery Court called for, in so far as it nominates James Watson assistant-clerk during John Taylor's life and continuing in office, and decern. And, as to the point, how far the Convenery Court have power to name James Watson assistant clerk to the Trades, after John Taylor's death, find it premature to determine that point, until the death or demission of the said John Taylor.'

A reclaiming petition for Mr Watson against this interlocutor was refused without answers.

For Taylor, *Alex. Wight.*

For Watson, *Robert Blair.*

A. E.

Fac. Col. No 58. p. 293.

1769. *January 17.* ANGUS SINCLAIR *against* JAMES HAMILTON, and Others.

No 40.
Malversation
of Justices
of Peace.
Poinding by
an Officer of
Excise, in
virtue of their
decree.

ANGUS SINCLAIR change-keeper in Hunthill, on an information from the Collector and Supervisor of Excise at Glasgow, was tried and fined for retailing foreign spirits without a licence, by Mr Hamilton and other Justices of Peace for the shire of Lanerk, and his effects having been poinded, in virtue of their decret, he brought an action of oppression and damages against the Justices, and against the Officer of Excise and Constable who distrained.

Alleged for the pursuer, *1mo*, The information against him was irregular and informal, as it comprehended a number of delinquencies, unconnected with each other, and committed by different persons. *2do*, He was not regularly cited. *3tio*, The evidence was not taken down in writing. *4to*, The action was prescribed.

Answered for the Justices, *1mo*, The including a variety of offences and offenders in one information, is agreeable to practice, and the complaint was such as is generally exhibited. *2do*, The pursuer was cited in the usual manner. *3tio*, Practice has authorised the not taking down a proof in writing, and such practice is founded on public utility. *4to*, The action was instituted within the term of prescription.

Charged against the Officer of Excise, and Constable, *1mo*, That their entering the pursuer's house, under authority of a writ of assistants, without information of prohibited goods, was irregular and illegal. *2do*, That the distress following on the decret of the justices was a spuilzie, as there was neither a warrant to distrain, nor were the formalities of a poiding observed.

Answered, *1mo*, An officer who misuses a writ of assistants can only be punished by the Court of Exchequer. *2do*, When an offender refuses to pay, the law allows a distress and sale of the offender's goods, by act 12th Charles II. referred to in acts 16th and 24th George II.

THE LORDS sustained the defence proponed for the Justices, Collector, and Supervisor, and assoilzied, but sustained action against the Officer of Excise and Constable, and allowed a proof with respect to the execution of the poiding.

Reporter, *Burjarg.*

Act. *Crosbie.*

Alt. *Sol. Dundas.*

Clerk, *Gibson.*

P. G.

Fac. Col. No 84. p. 140.

1769. *March 1.*

STANNERS *against* INGLIS.

IN a suspension of a charge for L. 8: 8s. Sterling, in which two persons were bound as principals, and a third as cautioner, the Clerk of the Bills accepted as cautioner a journeyman shoe-maker, who, though not a householder, appeared to be in a good way of bread for his situation in life.

The clerk did not consult the charger, as to the sufficiency of the cautioner; but it appeared he had taken out a copy of the bill.

Ultimate personal diligence was done against the original obligants, all of whom took the benefit of the act of grace. A poiding was likewise attempted against them, and against the cautioner in the suspension; but the messenger returned an execution, bearing that they had not a pound's worth of effects among them.

Upon this the charger brought an action against Charles Inglis, deputy-clerk

No 41.

Clerk of the Bills, how far liable for Cautioners in suspensions?