

1775. *March 2.* M'MASTER *against* FORSYTH.

M'MASTER commissioned from George Muir, merchant in the Isle of Man, a puncheon of rum and two casks of brandy. William Forsyth, having a vessel employed constantly in transporting goods betwixt the Isle of Man and Scotland, was employed to bring over the spirits, which were duly delivered to him; but he, instead of twelve and a half ankers of rum, and two casks of brandy, delivered only eight ankers of rum, and none of brandy. For the deficiency, M'Master brought an action before the Sheriff of Galloway. The Sheriff decerned; but Lord Elliock, Ordinary, 25th January 1774, suspended the letters *simpliciter*. And the Lords, 2d March 1775, adhered, and gave expenses. They considered the contract as a *pactum illicitum*, as a smuggling contract, not only defrauding the revenue, but counteracting a positive statute, Geo. I, c. 28, § 22, prohibiting such species of goods to be imported from Man into Britain; and that it was impossible that the same law which prohibited importation, could sustain action for breaking bargain concerning it.

1774. *July 30.* JONATHAN FORBES *against* GEORGE BEAN.

IN an action brought at the instance of Jonathan Forbes of Wellfield against George Bean, writer in Inverness, founded upon the Act, 4th P. J. VI. c. 216, against buying pleas; the libel concluded, *1mo*, That the conveyance granted should be declared void and null; and, *2do*, That Bean should be declared incapable of acting in any Court of Justice. In the course of this plea, it was doubted if the act extended to procurators before inferior courts; but it was thought that it did extend to them. It was doubted also, if it extended to the case where a plea, before the sale, was submitted to an arbiter, and if it did not thereby cease to be a plea. But Mr Bean's solid defence was this, That the right taken by him was from an old woman, whom he had not only alimanted, but laid out money in carrying on her plea, and was taken in security and payment of the sums so laid out *ab ante*; and therefore, that it did not fall under the Act of Parliament. The Lord Kennet, Ordinary, 17th December 1773, assoilyied Mr Bean; and the Lords adhered, and gave expenses.

1774. *December 16.* MAXWELL of DALSWINTON *against* The TRUSTEES of BLAIR of DUNROD.

MAXWELL of Dalswinton having pursued the Trustees of Blair of Dunrod for payment of a sum of money lost on a horse-race between them from Dum-

fries to Kirkcudbright; the Lords, 14th July 1774, found the 14th Act Parl. 1621 not in desuetude: they appointed, therefore, intimation to be made of the process to the Kirk-sessions of Dumfries, Kirkcudbright, and Kelton, to the end they might appear for their interests. And to this they adhered.

SMUGGLING CONTRACT.

It seems now sufficiently established, that action does not lie for damages for non-implemēt of a smuggling contract. See Erskine, p. 446, § 3; Home, 34 and 180. But it is a nicer question, Whether action lies for payment of freight, (for example) on performance of a smuggling contract? see 111 *New Coll.*, No. 64; or for the price of the goods? Formerly this was sustained, Kaimes, No. 40, and Home, 155. And, of late, it has been so in the case of the foreign merchant, who sells the goods, but is no party to the smuggling; 11 *New Coll.*, 16; 4th *New Coll.*, p. 225.

But, in

SUMMER 1776, DUNCAN, Indorsee of DANIEL FOX, *against* THOMSON;

they found that no action lay between the smugglers, on a bill for the price of smuggled tea.

Thomson had granted a bill to Fox, which was indorsed to Duncan as trustee. Several defences were urged against it, but overruled. The defender reclaimed, and urged, that the bill was granted by one smuggler to another, as his share of a smuggling adventure. The Lords found, "That no action lies in this case, in respect the same is brought between smugglers for implemēt of a smuggling contract; and therefore suspended the letters."

It is said a decision was pronounced in the Court of Common Pleas, lately, to the same effect.

A seller having brought an action for the price of a parcel of muslins seized after sale, on information of the buyer,—it was determined, by a special jury, before Justice Gould, in favour of the defendant; and held to be a point established by many precedents, "That no person selling smuggled goods can bring an action legally to recover of the purchase; the property of such goods being, at all times, his Majesty's."