

1789. January 13. TRUSTEES of HENRY GREIG *against* JOHN DAVIDSON.

No 86.

The court sustained action at the instance of a Scotsman carrying on trade abroad, for the price of contraband goods furnished by him to a person in Scotland.

GREIG, a Scotsman, who was settled as a merchant at Gottenburg in Sweden, shipped, in consequence of the commission of Davidson, a quantity of tea and other prohibited goods, on board of a vessel bound for the coast of Buchan in Aberdeenshire. Greig himself paid the freight; which was so far above the ordinary rate, that the excess appeared to be a compensation for the risk attending a smuggling voyage; and in the bill of lading which he took from the shipmaster, the hazard of seizure, as well as that of the sea, was excepted.

An action having been brought against Davidson for payment of the goods, he *pleaded* in defence, That as the pursuer was a native of this country, though residing abroad, he was in a different situation from that of a foreign merchant; insomuch that the degree of participation in the smuggling adventure, which was apparent from the circumstances mentioned above, precluded his right of action.

The Lord Ordinary, in a process of advocacy, affirmed a sentence of the Judge Admiral repelling the defence; and the Court, on advising a reclaiming petition and answers,

Adhered to the interlocutor of the Lord Ordinary.

A second reclaiming petition however having been presented, the Court expressed doubts of the preceding judgment and appointed the petition to be answered; but in the mean time the dispute was compromised by the parties. A similar question was afterwards determined in the case of the Attorney of James Cantley *contra* Thomas Robertson, 11th February 1790, *infra*.

Lord Ordinary, *Dunsinnan*. Act. *Abercromby*. Alt. *Haj, Maconochie*. Clerk, *Home*.
S. *Fol. Dic. v. 4. p. 32. Fac. Col. No 53. p. 94.*

1790. February 11.

ATTORNEY of JAMES CANTLEY *against* THOMAS ROBERTSON.

No 87.

The Court refused to sustain process at the instance of a Scotsman carrying on trade abroad, for the price of contraband goods, furnished by him to a person in Scotland.

ROBERTSON sent, by a ship bound to Rotterdam, and from thence back to Scotland, a commission to a trader in that place for a quantity of gin. The person to whom the commission was directed not being found, the shipmaster applied to Cantley, then settled at Rotterdam, but who was a native of Britain, had formerly carried on a smuggling traffic in the north of Scotland, and still held correspondence with people of this country engaged in illicit trade.

Cantley on this wrote to Robertson, desiring authority to execute his order, and requiring either a remittance for paying the shipmaster his freight in money, or an order for the payment of it in goods.

Robertson in answer gave the authority required, and ordered the freight to be paid in goods at the rate of six shillings per anker, being greatly beyond