

1795. *January 17.* JOHN MACLELLAND *against* ADAM and MATHIE.

ADAM and Mathie, wholesale spirit dealers, in September 1792, agreed to supply John Maclelland, a retailer, for a year with British spirits, of a certain quality, at a fixed price.

An additional tax being imposed on British spirits during the currency of the year, their price rose considerably; and Adam and Mathie having, on that account, refused to fulfil their agreement, Maclelland brought an action of damages against them, in which they

*Pleaded, 1mo.* The object of the contract was merely to secure the parties against the ordinary fluctuations in the market-price of the commodity. They had no view to the extraordinary rise occasioned by a new duty, which might eventually have been so high, as to have made performance of the contract, if not impossible, at least altogether ruinous to the defenders. They fall, therefore, to be assoilzied from the present action, upon the same principle, that an abatement of rent is allowed wherever the value of the subject let is greatly diminished by extraordinary causes, L. 15. D. Loc. cond.; Erskine, B. 2. Tit. 6. § 41.; Bankton, B. 1. Tit. 20. § 13.; 12th January 1697. Mackenzie, No 19. p. 7807.; 16th July 1762, Foster and Duncan against Adamson and Williamson, No 68. p. 10131.

*2do.* The defenders have had former agreements of a similar nature with the pursuer; but since the imposition of the tax, he has demanded a much greater quantity of spirits than usual, or than was necessary for him, in the usual course of his trade, merely with the view of making profit at their expense.

THE LORD ORDINARY repelled the defences.

A reclaiming petition being presented, the Court in general were clear, that a contract of sale could not be affected by a supervenient law, whether diminishing or increasing the price of the commodity, and therefore refused the petition, without answers, on the general point; but remitted to the Lord Ordinary to inquire into the averments of the defenders, as to the extra quantity.

Lord Ordinary, *Abercromby.* For the Petitioners, *Cranstoun.* Clerk, *Sinclair.*

D. D. *Fol. Dic. v. 4. p. 257. Fac. Col. No 151. p. 344.*

See LÆSIO ULTRA DUPLUM:

See MOVEABLES.

Pactum Legis commissoriæ; see IRRITANCY.

Warrandice in Sales; see WARRANDICE.

*Bona fide* purchaser; see BONA et MALA FIDES.

See APPENDIX.

No 75:

A wholesale dealer in spirits, who had agreed to supply a retailer for a year, at a certain price, found liable in damages for refusing to fulfil his agreement, although the market price of spirits had risen considerably, in consequence of a tax imposed during the currency of the year.