

No. 15. his village of Hawick, lying within his Barony of Hawick, had been of old erected into a free Burgh of Barony.

It was not pretended, that there was any usage in favour of the claim of Graham; but it had been once at least recognized by the Court in the case of this Burgh; Pears and James against Douglas, 2d July 1790, (not reported) as well as in the case of the Burgh of Paisley, 30th November 1790, No. 389: p. 7687.

The Court had no difficulty in authorising the Lord Ordinary to grant the horning, as craved.

Lord Ordinary, *Justice-Clerk.* For Petitioner, *Walter Scott.* Agents, *Riddell & Gillon.*

F.

*Fac. Coll. No. 200. p. 447.*

1807. *November 14.*

JOHN BROADFORD *against* JAMES MITCHELL NICHOLSON, Collector of Excise.

No. 16.

A full Record is not required by Law in a Justice of Peace Court.

JOHN BROADFORD was prosecuted for knowingly having in his possession foreign spirits which had not paid duty, by James Mitchell Nicholson, collector of excise, before the Justices of the Peace for the county of Forfar. He was found guilty and fined. The record or minute of this case in the Justice of Peace Court was in these terms: "*At Dundee, the 11th day of December 1805.—*"  
 "In presence of Alexander Riddoch, David Blair, and David Laird, Esqrs.  
 "Justices of Peace for the county of Forfar, sitting in judgment within the toll-booth of Dundee, in the ordinary court place thereof, in the hour of cause,  
 "anent the information laid before them by James Mitchell Nicholson, Esq.  
 "collector of excise, mentioning that there were ninety gallons of foreign  
 "geneva, and five gallons of foreign brandy seized from John Broadford in  
 "Arbroath, which had been already condemned by the Justices, but the action  
 "for the penalties was, on account of the absence of witnesses, continued, as  
 "the said information signed by the said James Nicholson bears. Which in-  
 "formation having been considered by the said Justices, with the depositions  
 "of witnesses adduced by the pursuer, They fined and amerced the said  
 "John Broadford in the sum of twenty-one pounds Sterling of penalty, and  
 "decerned accordingly; and ordained all execution necessary to pass and be  
 "directed hereon against the said John Broadford, for payment of the said  
 "penalty; and grant warrant to messengers at arms, and constables of the  
 "county of Forfar, to poid and distrenzie the said John Broadford's readiest  
 "goods and chattels for payment of the said fine, with the expense of such  
 "distress and poiding." Extracted upon this, and the preceding page, by,"  
 &c.

On this extracted decree a pouding was attempted, 10th April.

Broadford presented a bill of suspension. This bill was refused, 7th July. He then reclaimed.

Argument for suspender.

It is admitted that the Justices of the Peace have a final jurisdiction in excise questions, and that their decrees in such questions cannot be reviewed for *iniquity*. But their decrees may be reviewed for *irregularity*. Patulo against Maxwell, 25th June 1779, No. 101. p. 7586. Cunninghams and Simpson against Hume, 19th January 1796, No. 14. p. 600. Now here is a gross irregularity in the want of a proper record.

The record produced does not specify either the nature, time, or place of the offence for which the suspender was condemned. It only says, that spirits were seized from him, which might happen without any blame whatever on his part, and is no sufficient ground for a sentence of fine. Then, if it were an offence punishable by fine, yet without specification of the time, it does not appear that it was not committed beyond the time allowed by statute 31st Elizabeth, for bringing such a prosecution, nor without specification of the place, that it was locally within the jurisdiction of the Justices. If records of this kind are to be held sufficient, it is impossible for the Supreme Court to exercise any controul over those inferior courts which possess final but limited jurisdiction. But it is the right and the duty of the Supreme Court to exercise controul over these courts for two purposes. *1st*, To prevent them from exceeding their powers. *2dly*, To prevent them from neglecting proper form. It is, therefore, necessary, that their record shall show whether they have done either of these things, and where it fails in these particulars; this, of itself, is a most important want of form, which renders the procedure liable to the review and correction of the Supreme Court.

Argument for the charger, (stated at the Bar, there having been no printed answers.)

The proceedings in this case were in fact perfectly regular. The information charged an offence undoubtedly relevant, and which it was competent for Justices to try. A proof of this offence was taken in due form, and on that proof a sentence was given. There was, therefore, no irregularity in the proceedings. As to the record, it never was the practice of Justice of Peace Courts to keep a regular record. All that they have ever been accustomed to do, is to write down their sentence, with such a minute of, or reference to the procedure, as renders it intelligible. This accordingly has been done here, so that neither is there irregularity in the record.

The Court (Nov. 14, 1807) thought the record sufficiently full and formal for a Justice of Peace Court; and on the assumption that the proceedings had been regular, which was not denied, "Refused the petition."

Lord Ordinary, *Armadales*.  
Alt. Solicitor-General.

Act. *Gilb. Hutchison*.

Agent, *J. and T. Peat*.

J.

*Fac. Coll. No. 1. p. 1.*