

No 110. duced, a new duty equivalent to the duty on other articles is imposed. So in Glasgow, it was found legal to impose a duty on potatoes, then lately introduced. But when an alteration of a tax-table becomes necessary, this must be done by the magistrates themselves, and not by their tacksman. This was the opinion of the Court in this case.

Session Papers in Signet Hall.

S E C T. II.

Causes in which the Court cannot judge in the first Instance.

1630. July 23. L. PITSLIGO *against* DAVIDSON.

No 111.

A reduction of a service being raised on the head of bastardy, the Lords sustained themselves as judges, because it is only where a service is stopped by an allegiance of bastardy that it is remitted to the Commissaries.

THE deceased Forbes of Pitsligo, who was elder brother to this L. Pitsligo's goodsire's brother, and to whom the said pursuer's goodsire's brother succeeded in the lands and living of Pitsligo, had only two daughters, whereof the one being first married to Duguid of Achinhove, and from whom she being alleged to have been divorced, thereafter she is married upon umquhile Mr Thomas Davidson, minister, in which marriage there are two sons procreated, Alexander and Mr Thomas Davidsons. After the decease of the parents, Alexander is served and retoured heir to the said umquhile ——— Forbes of Pitsligo, his mother's father, one of the two heirs, whereupon he intents action of reduction and improbation of this L. Pitsligo, and his father, and goodsire's rights of the lands. This L. Pitsligo thereupon intents reduction of this retour and service of Alexander, upon that reason, because the said Alexander was a bastard, in so far as he was begotten upon his said mother, who then had a husband, viz. Achinhove living, with whom she was standing lawfully married, as the reason bears. This action upon the reason of bastardy was sustained, being pursued before the Court of Session, and they were found competent judges thereto, and that there was no necessity, as the defender alleged, that it should be remitted to be cognosed before the commissaries; but it was sustained, albeit there were also six months expired after the deducing of that service before it was quarrelled by this reduction; for that is only competent the time of the deduction of the service to the party, to oppone bastardy, to stay the service, and then the service and the trial of bastardy is remitted *ad judicium Christianitatis*, which is the commissariot, and which is appointed to be terminated within six months, and the opponent finds caution to satisfy the parties' charges, if he prevail not before the Commissaries; and upon occasion also,

the term after diligence will be prorogated at the parties' desire. Also the LORDS found, that this pursuer had sufficient interest to reduce this retour and service, albeit he was not nearest of blood to that party to whom the defender was served heir, if that service were reduced, and although the person served heir were a bastard, seeing there were bairns on life begotten in lawful marriage, of the other daughter of the said umquhile L. Pitsligo, and who would ever be preferred to this pursuer, being nearer in blood than he; likeas there is one gotten of that marriage served and retoured heir to the said umquhile goodsire, and whereby the defender *alleged*, that this pursuer had no interest to reduce that service; which allegiance was repelled, and the said pursuer was found to have interest to reduce the said retour, albeit he was not nearest of kin to the defunct, seeing he was infest, and in possession of the lands of Pitsligo, and his father and goodsire before him, whose right might be drawn in question by that retour and service; likeas thereupon action of reduction and improbation was intended at their instance against him, for production of his evidents of the said lands; and whereby the LORDS found, that he had interest to reduce the said service, which was the ground of the pursuit intended against him. See *JUS TERTII*.

No 111.

Act. *Advocatus, Nicolson & Morvat.*Alt. *Stuart & Lawrie.*Clerk, *Gibson.**Fol. Dic. v. I. p. 496. Durie, p. 534.*1687. *July.* MARGARET CALLENDAR *against* JOHN BOWAY.

THOUGH by the sixth act, Parliament 20. James VI., the Commissaries of Edinburgh are appointed sole judges to the reduction of inferior Commissaries' decreets, yet the LORDS advocated, *ob contingentiam causæ*, the reduction of a decret dative *ad omisssa*, pronounced by the Commissary of Stirling, in respect some of the sums omitted were produced before the session by the obtainer of the dative.

No 112.

*Fol. Dic. v. I. p. 496. Harcarse, (ADJUDICATIONS.) No 17. p. 5.*1707. *March 4.*

WILLIAM ALVIS, Sheriff-depute of Dumfries, and JOHN LANRICK, his Fiscal, *against* GEORGE MAXWELL of Dalswinton.

JOHN KELLY, sheriff-officer, coming to Dalswinton's house to give him a citation to the sheriff-court, at the instance of one Maxwell, for payment of a civil debt, Dalswinton calling for his act of admission, and he answering, he had served many years in that office, and needed not carry it always about him, Dalswinton imprisoned him for some hours, and then convening his te-

No 113.
The Lords are not judges competent to riots, batteries, or blood-wits, in the first instance.