

DIVISION XI.

Limitation of Penal Statutes.

1708. December 19.

Mr WILLIAM BOYLE, Brother to the Earl of Glasgow, and other Tacksmen of the Town of Edinburgh's Impost upon Ale, *against* CHARLES STRAITON, Brewer in Grange.

No 339.

Impost of two pennies upon the pint of ale and bear imported within the town of Edinburgh and its privileges, not liable to the three months prescription introduced by the 12th act of Parl. 1669, and statute 1st William and Mary, cap. 24. § 26. because these laws concern only pursuits for fines incurred by concealing and embezzling the excise; and the town of Edinburgh's impost is a civil debt.

THE town of Edinburgh's tacksmen pursued Charles Straiton for the impost of two pennies upon the pint of ale and beer imported by him within the town and its privileges, from the 1st of July 1706 to the 1st of July 1708, during the course of the pursuers tack.

Alleged for the defender, *1mo*, The act of Parliament 1693, conferring the gift of that impost upon the town, allows them the like execution and diligence for ingathering thereof as they have for their other common good and revenue; which is only to stop the ale or beer at the port till payment be made, as the town's collectors do for other imposts of brandy, causey-money, &c. *2do*, By the act 12. of the Parliament 1669, all process for goods imported, without paying custom and excise, must be raised within three months after the importing; and the defender is in a parallel case. And, further, by the statute of England, 1st William and Mary, cap. 24. § 26. information (*i. e.* process) against brewers or alehouse-keepers for any false or mis-entry or offence, can only be brought and entered within three months after the commission of the offence. Now, the matters of excise are, since the Union, regulated by the law of England; and the town of Edinburgh's impost is not more privileged than the Queen's excise.

Answered for the pursuers, *1mo*, It is unaccountable how the defender would restrict diligence for the town's impost to a collection at the port, which is impracticable; an hundred men not being sufficient to attend all the entries to the town and its privileges where ale may be imported. *2do*, The acts founded on concern only fines and penalties incurred by concealing and embezzling the Queen's excise; whereas, the impost pursued for is a civil debt; *rei persecutoria*, and the pursuers do not insist in a penal action, to have the value of the drink imported, in place of the cask and liquor that might have been seized by them, if found.

THE LORDS found the town's impost is not liable to the three months prescription.