

decrees repetition. The defender insists that the Court of Session cannot reduce the bond granted to the King; but allowing it to be so, in so far as he is concerned, the defender is still liable in damages, for having fraudulently induced the pursuers to grant such a bond, as any other person not concerned in the revenue would have been, that had concurred in the fraud; an action for reparation would have lain against such person before this Court; and so it lies against the defendant; and the pursuers now insist for reparation.

Replied, The bond was properly taken to the King, for public money to be intrusted with, whether Murray was properly an officer, or had a deputation or not; but this very question of the bond's being properly or improperly taken is only competent in the Exchequer, where full relief may be had; for though in a question with the King, it would only be competent to set the bond aside, in so far as already not implemented; yet Mr Grosset may be liable in damages and repetition. Mr Grosset is not now insisting for an adjudication; and when he does insist, it may be proper to object to the bond. The present action is a reduction of a bond to the King, which is not competent; when a petitory action for reparation of damages is brought, it will be time to answer it; even that will not be competent against this defender, though it would be against a partaker in the alleged fraud, for he could not be brought into the Exchequer; but the action against Mr Grosset lying there, to bring it here, might make a collision of jurisdictions: As part of the reasons of reduction of the bond and accounts, is an allegation Murray did not owe so much; this falls under the issue of conditions performed; and so far the cause is in dependence.

THE LORDS found that the Court had no jurisdiction to proceed so long as there was a dependence in the Court of Exchequer.

Act. *Leckhart.*

Alt. *Advocatus.*

Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. p. 340. D. Falconer, v. 2. No 182. p. 218.

1751. February 12. GORDON of Invergordon, against GORDON of Embo.

SIR JOHN GORDON of Invergordon having, in the year 1748, applied to the Michaelmas head court of the shire of Sutherland, to be enrolled on a wadset granted him by the Earl of Sutherland, was refused; and thereupon complained to the Court of Session against Sir John Gordon of Embo, whose objection to his title was sustained.

Answered; Among other things not now determined, the objection was good, in regard he did not instruct his valuation to the Court; and whereas he produced a disjunction of his lands, in value, from the remanent estate of the Earl of Sutherland, this cannot be regarded, as it is erroneous, and proceeded without any legal or proper evidence of the real rent, either of the wadset lands, or of the Earl of Sutherland's estate.

No 79.

When the proceedings of the Commissioners of Supply in dividing valuations, come in question before the freeholders in canvassing titles of enrolment, and from them before the Court of Session, they are subject to review.

No 79.

Replied ; The disjunction of valuations is committed to the Commissioners of Supply, whose determination cannot be reviewed, either by the head-court or Court of Session, as they are a Commission of Parliament for that purpose ; accordingly, it was found the Lords could not review the proceedings of the Commissioners appointed by the late act for recruiting the army.

Pleaded for the Complainant ; The Commissioners of the Supply are entrusted with the settling valuations, in order to proportioning the cess ; and what they do in that respect cannot be altered ; the cess must be raised ; and therefore the acts of the Commissioners cannot be suspended ; but several civil rights arise from the extent of valuations, as commonities are divided according to them ; and as civil rights are subject to the cognition of the Court of Session, the Lords must, in determining them, cognosce whether the several valuations be duly settled. In the present case, the qualifications of electors are subject to the cognition of the head-court ; and, as superintending it, the Court of Session ; but if neither can enquire into the valuation settled by the Commission of Supply, it is in their power to invest with that trust, and exclude from it whom they please. By the statute imposing a taxation in 1597, cap. 281. as the superiors, prelates, and barons, were to have relief against their vassals, and as it was enacted no suspensions should pass of any charge by the Lords of Session, so a Commission was appointed to grant suspensions ; by the next act 1621, cap. 2. the Lords of Session were made Judges to suspensions, and so by the subsequent acts 1633, cap. 2. 1665, and 1667 ; and the act 6th Parl. 1690, declares that all clauses in former acts, in relation to inbringing of the cess, should stand in full force as the supply thereby imposed, which is repeated in the after acts before and since the Union.

Pleaded for the Respondent ; No argument can be drawn from the old taxations, imposed primarily on the prelates and barons, when they, being liable for the sums charged on their estates, had relief from their vassals ; and to that effect the prelates were to convene their vassals, and proportion upon them their share of the taxation ; and the barons to be relieved according to the extent of the vassal's estates ; but when the cess was imposed according to the valued rent, the raising thereof was put in the hands of the Commissioners of Supply, and the method of quartering was introduced ; and whereas the act of convention 1667 extends this compulsitor of quartering, to the arrears of the former taxation, after diligence formerly competent had been used, and discussing suspensions anent it ; this does not amount to an allowance of suspending the new tax.

THE LORDS repelled the declinature. See MEMBER OF PARLIAMENT.

Act. *R. Craigie.*

Act. *Brown.*

Clerk, *Gibson.*

Fol. Dic. v. 3. p. 341. D. Falconer, v. 2. No 194. p. 232.

* * The like was decided, 10th March 1779, Ross against Roderick M'Kenzie.

See APPENDIX.