

not been paid; no gentleman returns from his travels without bringing sundry prohibited commodities along with him; but it was never heard that an impress officer could, on that account, adjudge them to the sea service.

No 21

Answered for the charger; There is no exemption from being impressed, competent in strict law, to sea-faring men of any denomination.

From a laudable attention to the interests of commerce, the Lords of the Admiralty generally instruct the Lieutenants on the regulation to pass masters and mates of vessels of 50 tons and upwards. But they may with-hold or suspend such instructions; and the charger's directions are, 'to impress as many sea-faring men, and others described in the press-warrants, as he possibly can, from privateers, as well as other ships or vessels.'

Supposing such exception to be established by inveterate usage, there is no law nor expediency in extending it to smugglers in any rank. A superiority among them, is only a pre-eminence in defrauding the revenue and fair trader, and can never, in a court of law, be attended with beneficial consequences to its possessor.

The charger pretends to no judicial powers, nor to punish smugglers. He only contends, that smuggling can give no exemption, and that a sea-faring man, otherwise liable to be impressed, cannot be privileged, because he holds rank in a smuggling vessel.

The subject of the charger's department are, seamen and sea-faring men. Offenders against the revenue on land, and gentlemen returning from their travels fall not within that description. A Captain of a King's ship is already in the service; and, if the sole employment of an East India Captain were to defraud the revenue, he would be equally subject to the impress regulation, with the meanest seaman.

THE LORDS' repelled the reasons of suspension, and found the letters orderly proceeded; and to this judgment they adhered, upon advising a reclaiming petition and answers.

N. B. The Court were unanimously of opinion, that masters and mates in a ship of 50 tons, or upwards, employed in a lawful commerce, could not be impressed.

Reporter, *Lord Kennet.* Act. *Hay Campbell.* Alt. *Crosbie, Elphinston.* Clerk, *Tait.*

C. *Fol. Die. v. 3. p. 311. Fac. Col. No 28. p. 32.*

1782. February 6. BRODIE, ELLIS, and HERD against NAPIER.

No 3.

What extent
of smuggling
ought to have
the above
effect?

BRODIE, Ellis, and Herd, were impressed by Captain Napier's officers in circumstances precisely similar to those occurring in the case of Brownings, decided 19th January 1781, No 2. p. 6610. But when the legality of the impressment came to be discussed, their situation was very different. The Brownings

No. 3.

had joined issue on the fact, that they were employed in a smuggling trade; they had redeemed their vessel from the officers of the revenue, without waiting the event of a trial; and the cargo had been actually condemned in the Court of Exchequer. Here the parties impressed positively denied their having been concerned in a smuggling trade. An action for penalties, instituted in the Court of Exchequer on that ground, had been dismissed, upon the public prosecutor's entering a *noli prosequi*; and their vessel and cargo had been released, by order of the Commissioners of the Customs, as having been unduly seized.

Captain Napier, however, maintained, that acts of smuggling could not only be established by trial in Exchequer, but might be the subject of proof in the Court of Session, and offered to bring a proof.

Observed on the Bench; The carrying on of a smuggling or contraband trade has been justly found to deprive a person of his immunity from being impressed; but single acts of smuggling, committed by persons usually employed in lawful commerce, ought not to be attended with such a penal consequence. Besides, after a party's being acquitted of that charge in the proper court, it cannot be renewed against him in another.

A bill of suspension had been presented by the parties impressed, which was reported.

"THE LORDS passed the bill."

Reporter, *Lord Alva.* For Bredie, &c. *Crosbie.* For Captain Napier, *Solicitor-General.*
C. *Fol. Dic. v. 3. p. 310. Fac. Col. No 29. p. 50.*

1782. February 6. CHALMERS *against* NAPIER..

No 4.

IN a question between these parties, the LORDS found, *imo.* That by act 13th Geo. II. c. 17. a ship-carpenter, equally with any landsman, is exempted from being impressed for two years after he goes to sea; and,

2do. That a protection granted by the Lords of the Admiralty, is not the only mode of ascertaining a party's right to this statutory exemption.

Reporter, *Lord Alva.* For Chalmers, *Henry Erskine.*
For Captain Napier, *Solicitor-General.*

C. *Fol. Dic. v. 3. p. 310. Fac. Col. No 28. p. 49.*

1793. June 26.

JAMES TURNBULL and MALCOLM M'DONALD *against* SIR GEORGE HOME, Bart.

No 5.

A PERSON bred to the sea, who afterwards binds himself apprentice to a trade, may be impressed:

Fac. Col.

*** This case is No 13. p. 599.

See APPRENTICE. See APPENDIX.