

be guilty of treason, his affording to smugglers the means of infringing the revenue-laws is also a public offence, even smuggling being a species of rebellion.

No 87.

THE LORDS, by a very narrow majority, "altered their former interlocutor, and assoilzied the defender."

A reclaiming petition having been presented against this judgment, it was, by the same narrow majority, refused without answers.

Lord Ordinary, *Stonefeld.* Act. *Dean of Faculty.* Alt. *Macomachie.* Clerk, *Home.*
S. *Fol. Dic. v. 4. p. 32. Fac. Col. No 112. p. 210.*

1790. July 7.

The ATTORNEY of YOUNG & Co. against ALEXANDER IMLACH.

IMLACH commissioned a quantity of tobacco and rum from Henry Greig, a merchant in Gottenburg, but a native of Scotland. The bill of lading bore the exception of seizure; and it was evident, that Greig knew of the goods being destined for a smuggling adventure. From his letters it appeared, that he had been looking out for a cargo of such contraband goods for Imlach's use, and that, on a former occasion, he had employed his own agents at London to make an insurance of a cargo of that sort sold by him to Imlach, against the hazard of seizure by the revenue officers; as was evinced by the amount of the premium.

No 88.
Found in conformity with the above.

The goods were seized on their arrival in the Frith of Forth, and carried into condemnation. Greig afterwards drew bills on Imlach for the value, in favour of Young and Company, his agents in London.

In consequence of a commission likewise from Imlach, John Christian, a native of the Isle of Man, who carried on trade at Dunkirk, of which town he was a burgher, shipped for him a quantity of Geneva. The bill of lading in this case, mentioned the ship's being bound for Bergen, and expressed nothing as to the hazard of seizure. It appeared, however, that Christian's agents at London had, at his request, insured part of this smuggling cargo for Imlach. The vessel carrying the goods happened to be totally wrecked in the Murray Frith.

Imlach having granted a promissory note for the value, it was indorsed to Young and Company, who were also agents for Christian. They accordingly, in the name of an attorney, brought an action against him, for payment of both parcels of goods, before the Admiralty-court, where they obtained decree. A bill of suspension was presented, which the Lord Ordinary reported to the Court, who appointed memorials on the cause.

No 88.

The argument contained in them was not, in any thing material, different from that which occurred in the case of Cantley, 11th February 1790, No 87. p. 955^o.

On advising the memorials, the LORDS, by a small majority, passed the bill."

Reporter, *Lord Justice-Clerk.*

Act, *Abercromby.*

Alt. *Cullen.*

S.

Fol. Dic. v. 4. p. 32. Fac. Col. No 144. p. 286.

No 89.

1791. *January.* NISBET'S CREDITORS *against* ROBERTSON.

An heritable bond was granted for the price of smuggled goods by a merchant in Scotland to his correspondent in Holland, who was accessory to the importation; the bond was assigned for value to a third person, who took infestment on it. On the bankruptcy of the debtor in the bond, the trustee for his creditors brought reduction of the security on the score of its being *pactum illicitum*, and the LORDS reduced it accordingly. See APPENDIX.

Fol. Dic. v. 4. p. 33.

1793. *May 15.*

ATTORNEY OF THOMAS CULLEN & Co. *against* DAVID PHILP.

No 90.

A merchant settled abroad, whether a foreigner or a native, who is accessory to smuggling goods into this country, has no action for the price of them.

THOMAS CULLEN and Company, merchants, at Ostend, had been in the practice of supplying David Philp at Boarhills in Fifeshire with contraband goods, sometimes on commission, and sometimes at shore price, that is, a price payable on delivery of the goods in Britain, and sufficiently high to ensure the vender against the risk of seizure.

Captain Oldfield always had the charge of the vessels employed by Cullen and Company on these occasions. By a letter from Cullen and Company to Philp in January 1789, they informed him, that Oldfield was to sail in a few days from Ostend, with a quantity of gin and brandy; that he meant first to call at Boarhills, when he expected Philp would be prepared for him, and assist him in the disposal of the cargo.

The letter was so expressed as to leave room for arguing, that the goods were the property of the captain.

Oldfield accordingly arrived at Boarhills soon after. Philp agreed to take a considerable quantity of the cargo, and accepted bills for the price, payable to Thomas Potts, nephew to Thomas Cullen, who acted as supercargo on this occasion. The greater part of the goods were seized in the landing.

The bills were indorsed to Sir William Forbes and Company, for behoof of Cullen and Company, to whose account they were immediately placed; and