

had no right to interfere with stranded vessels, or prevent the owners of the cargo from disposing of it as they thought proper; 12th Anne, § 2. Cap. 18; 4th Geo. I. Cap. 12; 26th Geo. II. Cap. 19; 17th February 1725, Monteir, No. 4. p. 16796; 19th February 1751, Lord Panmure, No. 6. p. 16798; Erskine, B. 21. Tit. 1. § 18; and concluding, "That the said Lord Dundas, James Watson, and James Sinclair, are liable, conjunctly and severally, in damages to the complainers, to the extent of £500."

No. 14.

It was answered upon the part of the Admiral, That he had a power with regard to stranded vessels, to take charge of the vessel and cargo for behoof of all concerned; that stranded ships were inserted in the commission granted by the Crown to the Admiral, and that the usage of Orkney hitherto has been invariable with regard to this jurisdiction. It was further contended, that it was highly expedient this trust should be reposed in the Admiral, who was a responsible person, instead of agents, who offered their services with a view to their own emolument, and had no regard for the interest of the proprietors of the cargo.

The Court, upon advising the petition and complaint, with answers, replies and duplies, were clearly of opinion, that the proceedings of the Vice-Admiral-depute, and his Procurator-fiscal, were illegal and unwarrantable. They therefore found them liable in damages and expenses, and remitted to the Lord Ordinary to proceed accordingly.

Lord Ordinary, Glenelg. Act. Clerk, Gillic. Agents, J. Macvicar. Alt. Solicitor-General, Blair, Robertson, Bruce. Agent, G. James, W. S. Clerk, Mackenzie. J. Fac. Coll. No. 196. p. 439.

1805, February 27. GRAHAM, Petitioner.

THOMAS OLIVER, merchant in Hawick, having refused payment of his accepted bill to John Graham, brewer there, a protest (2d Jan. 1805) was taken, and recorded in the Bailie-court books of Hawick. An extract of this protest, having a decree interponed by the Magistrates of that Burgh, together with their precept subjoined in common form, having been presented to the Clerk of the Bills, for letters of horning, a doubt occurred, how far such was competent.

The point was reported by the Lord Ordinary on the Bills.

Hawick is a Burgh of Barony, independent of the superior. Its privileges are enjoyed, in consequence of a charter of erection, by James Douglas of Drumlanrig, dated 11th October 1537, proceeding on the narrative, that the old charters and evidents had been lost and destroyed by the inroads of the English and thieves, in the bypast times of enmity and war, by which it appeared, that

No. 15.

Horning competent on the extracted decrees of the Magistrates of Burghs of Barony, if they have been made independent of their superior, prior to the jurisdiction act.

No. 15. his village of Hawick, lying within his Barony of Hawick, had been of old erected into a free Burgh of Barony.

It was not pretended, that there was any usage in favour of the claim of Graham; but it had been once at least recognized by the Court in the case of this Burgh; Pears and James against Douglas, 2d July 1790, (not reported) as well as in the case of the Burgh of Paisley, 30th November 1790, No. 389: p. 7687.

The Court had no difficulty in authorising the Lord Ordinary to grant the horning, as craved.

Lord Ordinary, *Justice-Clerk.* For Petitioner, *Walter Scott.* Agents, *Riddell & Gillon.*

F.

Fac. Coll. No. 200. p. 447.

1807. *November 14.*

JOHN BROADFORD *against* JAMES MITCHELL NICHOLSON, Collector of Excise.

No. 16.

A full Record is not required by Law in a Justice of Peace Court.

JOHN BROADFORD was prosecuted for knowingly having in his possession foreign spirits which had not paid duty, by James Mitchell Nicholson, collector of excise, before the Justices of the Peace for the county of Forfar. He was found guilty and fined. The record or minute of this case in the Justice of Peace Court was in these terms: "*At Dundee, the 11th day of December 1805.—*"
 "In presence of Alexander Riddoch, David Blair, and David Laird, Esqrs.
 "Justices of Peace for the county of Forfar, sitting in judgment within the toll-booth of Dundee, in the ordinary court place thereof, in the hour of cause,
 "anent the information laid before them by James Mitchell Nicholson, Esq.
 "collector of excise, mentioning that there were ninety gallons of foreign
 "geneva, and five gallons of foreign brandy seized from John Broadford in
 "Arbroath, which had been already condemned by the Justices, but the action
 "for the penalties was, on account of the absence of witnesses, continued, as
 "the said information signed by the said James Nicholson bears. Which in-
 "formation having been considered by the said Justices, with the depositions
 "of witnesses adduced by the pursuer, They fined and amerced the said
 "John Broadford in the sum of twenty-one pounds Sterling of penalty, and
 "decerned accordingly; and ordained all execution necessary to pass and be
 "directed hereon against the said John Broadford, for payment of the said
 "penalty; and grant warrant to messengers at arms, and constables of the
 "county of Forfar, to poid and distrenzie the said John Broadford's readiest
 "goods and chattels for payment of the said fine, with the expense of such
 "distress and poiding." Extracted upon this, and the preceding page, by,"
 &c.