

State, the report of the sub-commissioners was found in the hogsheads as well as the present, and yet the Court sustained the plea of dereliction, as sufficient to bar the approbation. And in this question there is no ground, either in law or in reason, for distinguishing betwixt the case of the Crown and that of the subject. The statute 1600, founded upon by the pursuers, is entirely foreign to this question.

THE COURT 'assoilzied from the approbation.'

N. B. See decision, Stair, 1st February 1671, Ferguson against Parishioners of Kingarth, *voce* PRESCRIPTION.

Act. Lord Advocate. Alt. R. Macquhen. Clerk of Teinds.
Fol. Dic. v. 3. p. 368. Fac. Col. No 96. p. 243.

No 15.

S E C T. II.

Not to be prejudiced by the neglect of his Officers.

1528. December 16. THE KING against JOHN GRAHAME.

GIF ony actioun be intentit at the King's instance, the defendar aucht not to obtene ony protestatioun aganis him, albeit he persewit not in time, nor maid na instance; because na protestatioun sould be admittit in the King's actiounis.

Fol. Dic. v. 1. p. 524. Balfour, (DEFENDER.) No 13. p. 296.

No 16.

A. against B.

IN all matters where the King has interest, albeit his officers be not called, yet if the party be perceived to collude to the King's prejudice, the King's advocate may cause call the cause, and get the King admitted for his interest.

Kerse, MS. f. 20.

No 17.

1633. March 12. THE KING against EARL OF STRATHERN.

THE KING, by his advocate, having compeared at a service, and consented thereto, and done several other deeds of homologation thereof afterwards;

No 18.

No 18. nevertheless a reduction of the retour was thereafter sustained, at his Majesty's instance, after better information, because the wrong information and neglect of the officers ought not to prejudice his Majesty.

Fol. Dic. v. I. p. 524. Durie.

* * * This case is No 116. p. 6690. *voce* IMPROBATION.

1694. *January 24.*

JAMES CRAWFORD of Morquhanny *against* SIR THOMAS KENNEDY.

No 19.
The excep-
tion of *com-*
petent and
omitted does
not bar the
King from
challenging
decrees ob-
tained against
him.

THIS was a declarator that he ought to be liberated of his sub-tack of the annexed excise of Fife; because, by the supervenient law in 1693, imposing the additional excise of three pennies more on the pint of ale, the subject set in tack to him is considerably diminished, and the brewing given over by many, so that he cannot raise the half the tack-duty. *Answered*, This accident arises from no fact and deed of mine, nor by my default, but by a supervenient law, which I could neither foresee nor impede; and in locations, every deterioration of the subject does not liberate the tenant, but only a total devastation, such as by water, or overblowing, &c. for if they lose one year, they may gain as much another.—THE LORDS seemed all to be clear that it was no ground for a total liberation and evacuating the tack, by declaring it null; but they came to the second question, if it might be a ground for giving the sub-tacksman an abatement, or deduction of their tack-duty; and it was remembered, that in 1690, they sustained the want of the subject to be a ground of defalcation, in the case of Robert Burnet, Commissary of Peebles, who had set a tack of his quota of testaments, in regard in 1689 judicatures did not sit.* But the LORDS considering, that whatever they gave down to the sub-tacksman, the principal tacksman would crave the same from the King, and that they would have no certain rule whereby to walk, in liquidating what should be the case; therefore they thought it more competent to remit it to the Lords of the Treasury and Exchequer, who *ex gratia* after trial might give them an ease, but the Lords, who were bound to decide by the strict rules of justice, could not do it.

1696. *July 2.*—THE mutual declarators between Captain James Crawford of Morquhanny, and George M'Kenzie, on the one part, and Sir Thomas Kennedy on the second, and the Officers of State on the third, mentioned 24th January 1694, were again reported. It was now *alleged* by the King's Advocate, whatever ease or abatement the sub-tacksman may get on account of their damages and losses by that supervenient act of Parliament, that Sir Thomas, the principal tacksman, could plead none; because they had given over their tacks on the emerging of the act, which he did not, though desired, and so took of

* Examine General List of Names.