

SECT II.

Action lies at Common Law for redress, where the Barons of Exchequer are guilty of partiality in completing gifts proceeding from the Crown.

1699. February 12. VISCOUNT of TIVIOT *against* EARL of LINLITHGOW.

No 308.

IN a competition between two gifts of forfeiture, presented to be past in Exchequer about the same time, the Barons having given an undue preference to the last gift, whereby it came first to be completed by infestment, a reduction was brought before the Court of Session, at the instance of the first donatar, and the question turned upon the competency of the Court. On the one hand it was *pleaded*, That the Exchequer was a Sovereign Court, and though the preference given by them to the last gift was not properly *res judicata*, yet it was such as precluded the cognition of the Court of Session, the Exchequer being in use to prefer, without regard to priority of dates, and having a power to qualify, alter, and restrict the King's gifts.—It was *pleaded* on the other hand, That it was no actual jurisdiction in the Exchequer to pass gifts, they acting therein in no other shape than as any Nobleman's commissioners who is out of the kingdom.—THE LORDS made a distinction betwixt gifts of escheat, which are within their commission, and which the Exchequer may grant or not, as they please, and gifts of forfeiture, which can only be past under the King's hand; and though the consent of Exchequer be requisite to the consumation of gifts of forfeiture, yet this is only as a step of diligence, in which the Exchequer ought to act impartially; and if they do otherwise, an action for remeid must lie at common law.—THE LORDS found themselves competent to judge in this case, and afterwards preferred the first gift.

Fol. Dic. v. 1. p. 507. Fountainball.

* * This case is No 1. p. 5109. *voce* GIFT of FORFEITURE.

1697. December 28. HOWIESON *against* LADY KINNAIRD.

No 309.

A CREDITOR having obtained from the Exchequer a gift of the single and life-rent escheat of his debtor, the same was burdened with 2000 merks a-year to the debtor's lady, which was the jointure she had by her former husband, and which belonged to the present husband *jure mariti*. Another creditor obtained a second gift, at the passing of which the lady compeared, craving it might be

No 309. burdened with her 2000 merks, as the former was. The Exchequer, upon debate, restricted the jointure to L. 1000, and burdened the second gift with that sum. In a competition before the Court of Session, the LORDS found the Exchequer were *functi*, and could not restrict the first gift by granting a second, and preferred the first donatar, with the burden of the lady's 2000 merks.

Fol. Dic. v. 1. p. 507. Fountainhall.

* * * This case is No 36. p. 5106. *voce* GIFT of ESCHEAT.

DIVISION XI.

Justices of Peace.

SECTION I.

Jurisdiction of Justices of the Peace.

1710. *January 25.*

MR JOHN PATERSON Collector of Excise within the Shire of Perth, *against* SIR JAMES RAMSAY of Balfour and Others.

No 310.
Sentences of
Justices of
Peace in mat-
ters of excise,
found not li-
ble to review.

SIR JAMES RAMSAY, David Campbell of Kerbeck, and James Ogilvie, having granted bond for L. 70 Sterling, contained in two decreets obtained by Mr John Paterson against Mr John Ogilvie, brewer in Cupar of Angus, before the Justices of Peace in Perthshire, one for L. 50 for his keeping a concealed store-house, and the other for L. 20, for refusing access to a gauger to search his cellars and store-house; the granters of the bond raised a suspension and reduction thereof, and of the said decreets, upon nullities and informalities.—THE LORDS, considering that the sentences of Justices of Peace in matters of excise are by statute final, and not subject to the review of any other judicature, declined to judge whether the decreets were formal or not; but found the letters orderly proceeded, except as to the penalty, which they suspended; and further, superseded extracting of their own decret for a certain time, that the suspenders might apply to the next quarter sessions of the said Justices of Peace for redress.

Fol. Dic. v. 1. p. 508. Forbes, p. 389.