

to the act 13th Geo. II., and a bill of suspension being offered, for that the Justices are only made judges for such seed as offered to sale; 2dly, That it is only in that event that any penalty is imposed, but neither penalty nor forfeiture on the bare importation; 3dly, That the seed was discoloured by a tedious passage, but offered to prove by making the experiment that it was sufficient even for sowing. But the Lords found the bill not competent before them and therefore refused it. But the President thought the Quarter Sessions might yet receive an appeal.

No. 53. 1751, Jan. 16. THE DUKE OF ATHOL, &c. *against* MURRAY.

GROSSET employed his servant Murray to receive the customs for him, and after he had done so for some time, Bisset and one Edwards became securities for him by a bond for L.500 to the King; the condition was, that he should faithfully account to Grosset for duties received or to be received by him; and some time thereafter Murray having died, Bisset and Edwards gave a new bond also in the King's name for L.1000, whereof the conditions were the same; and Murray counted often, and there was always a large balance in Murray's hands, and in 1745 the balance was above L.1100, when Grosset dismissed him, and took out extents out of Exchequer against Bisset and Edwards on the last bond. They applied several times to have them set aside by the Barons, which was refused; and at last the Duke of Athol being it seems bound by paction to relieve Bisset, there were sundry communings, and at last Bisset paid L.500 to Grosset and got a total discharge; but as Edwards had not the money he put in a plea of conditions performed, and Grosset (or rather Lord Advocate) put in a replication assigning a breach of conditions, and Edwards put in a rejoinder, so that issue was joined as early as 1747, and before that time (it was said) Grosset had paid up the balance due by him to the Crown, at least had in payment of that and subsequent collections paid more than the balance amounted to when he dismissed Murray. Then the Duke of Athol, Edwards, and Bisset, pursued reduction in this Court of the said bonds to the Crown, wherein they called the Officers of State, alleging that they were fraudfully induced by Grosset to sign the bonds; and 2dly, That his accounts with Murray were fraudulently made up, and concluded that the bonds being reduced, the L.500 paid by Bisset should be restored. And about the same time this reduction was raised, Grosset pursued an adjudication of Edward's estate, wherein the reasons of reduction were repeated as defences. In the reduction Grosset objected to the jurisdiction, first on the Exchequer act *Svo Annæ*, and 2dly, on the *lis pendens* in Exchequer by the issue joined. On the Ordinary's report for advice, we first repelled the declinature, but on reclaiming bill and answers we appointed a hearing in presence, and then informations, which were this day reported by the President. It was answered to the objection, that Murray had no deputation, nor had Grosset power to give him any, and therefore the bond was unwarrantably taken in the King's name; 2dly, That though it had been warrantably taken, yet if it was extorted by force or elicited by fraud, the party injured must have his remedy at common law, and if violence had been used it could have been tried in the Justiciary and damages given; 3dly, That now the Crown being paid by Grosset the Crown had no interest in the question, and it ceased to be a revenue debt; 4thly, Grosset had acknowledged the jurisdiction of this Court by his pro-

cess of adjudication, in which all the grounds of this reduction were proponed as defences ; and as to the *lis pendens* in Exchequer, that the extents all passed of course, and one of the Barons refusing to stay execution of them could not make a *lis pendens*, and as to the plea entered of conditions performed, that was what Edwards was forced to for preventing the execution of the extents. Answered, That whether Grosset could lawfully give a deputation or not, yet since Murray was to intromit and did intromit with the King's revenue, the bond was regularly taken in the King's name, and behoved to be so, and he and his sureties by the Exchequer act could be tried for such intromission only in Exchequer. To the second, That whether there lies relief from equity against such bonds on account of fraud or any other ground, can only be tried in the Court of Exchequer by bill in equity. To the third, That as there is in Court no proper evidence that the money is paid to the Crown by Grosset, so if there were, as he is entitled to relief against Murray and his sureties, he is also entitled to the aid of the Court of Exchequer against these sureties, and he has got it. To the fourth, Edwards could be under no force but what was legal and just, to enter any plea in the Court of Exchequer, and if the Exchequer had not the jurisdiction, they would have sustained a declinature or demurer to the jurisdiction ; and if they had jurisdiction, then it is *lis pendens* by the plea entered and issue joined, and the process of adjudication is founded on the very words of the Exchequer act, whereby, even for debts purely and properly revenue debts due to the Crown, lands in Scotland cannot be affected but according to the rules and forms of the law of Scotland, and therefore the suing such adjudication in this Court is no acknowledgment of our jurisdiction to try the justice of the debts directly contrary to the whole purport of that act. The President had formerly been for repelling the declinature but owned that on considering the case he had altered his opinion. He was clear that the bond was rightly taken in the King's name, and that the debt due to the Crown could only be tried in Exchequer ; only he doubted whether it might not make a difference, if the whole debt due by Grosset to the Crown was paid ; he thought that if that debt was still owing the Court was only giving its aid, the trial could only be in Exchequer, but did not know if the case was the same when the aid was given after the Crown was paid up ; but as there was here no proper evidence that the Crown was paid, and as there was a *lis pendens* by the issue joined, he thought there might be a collision of jurisdictions if we sustained this process. We all agreed with him ; only as to the specialty of the monies being paid to the Exchequer, that Court has no jurisdiction but what this law has given it, and if after payment to the Crown it could not be considered as a revenue debt and within the jurisdiction of that Court, how could the Exchequer in any case after such payment give the aid of the Court, which they do every day ; and therefore the giving that aid daily without complaint is to me an argument that it still is considered as a revenue debt and within their jurisdiction ; and there might be a great collision of jurisdictions if the account betwixt the Crown and Grosset could only be settled in the Exchequer, and the account betwixt Grosset and Murray and his sureties were to be settled before us. However, I mentioned one doubt, viz. if any third party besides Grosset had fraudulently induced Bisset and Edwards to grant this bond for Murray, though they must have performed to the King and to Grosset, yet could not that third party have been sued on that fraud in this Court to repair their damages? in

which question the Crown or Grosset would have no interest; and therefore I moved a doubt, whether in the question of jurisdiction it would make any difference that Grosset himself was charged with the fraud, that is, though I thought we could not meddle with the bond to reduce it as was concluded in this action, nor with the accounts stated between Grosset and Murray, or the frauds charged as arising from these accounts, yet might not this Court have jurisdiction as they would against a third party, so against Grosset, to try whether he had by any fraud elicited from them that bond, to the effect of decerning him to relieve them of it? The President thought we would have jurisdiction against a third party, but against Grosset he thought it would make a collision with the Exchequer, and we all agreed to sustain the objection. Our interlocutor finds that we have no jurisdiction to proceed while the suit against Edwards depends in Exchequer.

No. 54. 1751, (1741) June 26, 30. SIR ROBERT PRINGLE, &c. *against*  
EARL OF HOME, &c.

JUSTICES OF PEACE of Berwickshire anent the place of meeting delayed till Tuesday, —26th June 1741.

This delayed till this day, 30th June, to the end that the ancient commissions in 1617 and 1661 might be produced, which, at least those in 1617, undoubtedly would have determined the point. But it being now reported that none of these commissions were to be found, the Lords found that the head burgh was the place where the Quarter Session were to meet, and therefore suspended the order.

No. 55. 1751, July 4. BELCHIES *against* THE GOVERNOR OF EDINBURGH CASTLE.

THIS was a complaint for the sentry at the Castle refusing access to a messenger to the Castle to execute letters of second diligence against the Lieutenant. The answers admitted, that the King's letters behoved to have course and be executed in the Castle, but seemed to import, that in fact it was impracticable, or behoved to depend on the pleasure of the Governor for the time. As no fact was directly charged on the Deputy-Governor and Lieutenant, if it was not that they had not given general orders when any such officer of the law demanded admittance either to admit him or to acquaint the Governor that he might admit him, or show cause why he did not; therefore we assoilzied the Deputy-Governor and Lieutenant, but found, that the Commander of the Castle for the time is bound to give access to the officers of the law to execute the King's letters in the Castle.

No. 56. 1751, July 25. ALEXANDER GOLDIE *against* ———.

MR GOLDIE this day presented an advocation of a process against him before the Magistrates of Edinburgh for L.4. sterling on his privilege as a member of Court. I doubted whether on the words of the jurisdiction act the privilege was any exception, and therefore reported it; and the Lords found the privilege still subsisted, and therefore I passed the bill.