

*Alleged* for the pursuer, *1mo*, The information against him was irregular and informal, as it comprehended a number of delinquencies, unconnected with each other, and committed by different persons. *2do*, He was not regularly cited. *3tio*, The evidence was not taken down in writing. *4to*, The action was prescribed.

*Answered* for the Justices, *1mo*, The including a variety of offences and offenders in one information, is agreeable to practice, and the complaint was such as is generally exhibited. *2do*, The pursuer was cited in the usual manner. *3tio*, Practice has authorised the not taking down a proof in writing, and such practice is founded on public utility. *4to*, The action was instituted within the term of prescription.

*Charged* against the Officer of Excise, and Constable, *1mo*, That their entering the pursuer's house, under authority of a writ of assistants, without information of prohibited goods, was irregular and illegal. *2do*, That the distress following on the decret of the justices was a spuilzie, as there was neither a warrant to distrain, nor were the formalities of a poiding observed.

*Answered*, *1mo*, An officer who misuses a writ of assistants can only be punished by the Court of Exchequer. *2do*, When an offender refuses to pay, the law allows a distress and sale of the offender's goods, by act 12th Charles II. referred to in acts 16th and 24th George II.

THE LORDS sustained the defence proponed for the Justices, Collector, and Supervisor, and assoilzied, but sustained action against the Officer of Excise and Constable, and allowed a proof with respect to the execution of the poiding.

Reporter, *Burjarg.*

Act. *Crosbie.*

Alt. *Sol. Dundas.*

Clerk, *Gibson.*

*P. G.*

*Fac. Col. No 84. p. 140.*

1769. *March 1.*

STANNERS *against* INGLIS.

IN a suspension of a charge for L. 8: 8s. Sterling, in which two persons were bound as principals, and a third as cautioner, the Clerk of the Bills accepted as cautioner a journeyman shoe-maker, who, though not a householder, appeared to be in a good way of bread for his situation in life.

The clerk did not consult the charger, as to the sufficiency of the cautioner; but it appeared he had taken out a copy of the bill.

Ultimate personal diligence was done against the original obligants, all of whom took the benefit of the act of grace. A poiding was likewise attempted against them, and against the cautioner in the suspension; but the messenger returned an execution, bearing that they had not a pound's worth of effects among them.

Upon this the charger brought an action against Charles Inglis, deputy-clerk

No 41.

Clerk of the Bills, how far liable for Cautioners in suspensions?

No 41. of the bills, upon the act of sederunt, 27th December 1709, concluding for damages, for accepting of an insufficient cautioner.

*Pleaded* in defence ; As the clerk of the bills cannot be acquainted with all the cautioners who are offered to him from every corner of Scotland, his practice is to inquire at the agent for the charger, and to take no cautioner who is not approved of by him. And he constantly follows this rule, unless where a copy of the bill is taken out by the charger, in which case, he thinks himself safe to take any cautioner, who is habit and repute good for the money, if he be not put upon his guard, by a caveat lodged at the bill-chamber. The cautioner in this case, an industrious tradesman, was believed to be abundantly sufficient, especially as there was reason to suppose, that the suspenders themselves were able to pay the money, since no caveat had been lodged by the the charger.

The clerk of the bills is not bound as a subsidiary cautioner ; he cannot be made liable, unless he has been guilty of such a malversation in his office, as may subject him in damages.

“ THE LORDS sustained the defence, and assolizied.”

Act. G. Buchan-Hepburn.

Alt. Macquenn.

G. F.

Fol. Dic. v. 4. p. 197. Fac. Col. No 90. p. 341.

1769. June 29.

HASTIE against CAMPBELL.

No 42.  
Schoolmaster  
of a royal  
burgh re-  
moveable  
summarily by  
the council,  
upon just  
cause.

MR JOHN HASTIE was admitted rector of the grammer-school of Campbelton, by the Magistrases and Council, upon an examination by the Presbytery ; and, beside the allowance given by the town, received a yearly salary modified by the Commissioners of Supply.

After he had been some years in the office, a memorial was presented to the Council by Patrick Campbell of Knap, burgess, resider in Campbeltown, for himself and others, resider in Campbeltown, complaining that Mr Hastie was irregular in his attendance upon the school ; that he was in the practice of correcting his scholars in a cruel and barbarous manner, to the danger of their health ; and praying the Magistrates to inquire into the matter, and give proper relief.

This memorial was served upon Mr Hastie, who gave in answers, but afterwards withdrew his compearance ; and a proof having been taken, the Magistrates found all the articles complained of proved, and deprived him of his office.

Mr Hastie brought a reduction, and, objecting to the evidence, as led *ex parte*, contended, That the procedure was irregular in various particulars.

*Imo*, Town-councils of royal burghs are no more than administrators of the common concerns of the borough, but they are no court, and have no juris-