

The point occurred also in the year 1766, in passing a bill of advocacy,

KNEAN and SAYLE *against* GRAHAM,

before Lord Elliock. The advocacy was past, but never afterwards appeared in the Inner-House.

It occurred also, in a complaint against John Blacklaw, at the instance of his creditors; but the complaint, on account of an informality, his Majesty's advocate not being a party to it, was not insisted in.

It occurred again,

1775. *November 3.* M'LURE and M'CREE, Indorsees from Ferguson, *against* PATERSON and OTHERS,

but not indorsees for value. The Lords ordered memorials, and afterwards a hearing in presence, which came to be advised 26th February 1779. "The Lords, after long reasoning, found that no action lay upon the note in question; therefore they sustained the defence, and assoilyied." It was a note for £272, as the price of a certain number of casks of brandy, delivered out of a smuggling vessel in a bay in Galloway, to the defenders, who brought boats to the ship-side for that purpose. This was admitted, and indeed was proved; so that both the pursuers and defenders were clearly guilty of smuggling,—and hard to say which was most. The Lords decided on the case as it stood; refused a reclaiming petition, without answers; and adhered, 3d November 1775.

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DALLAS *against* MACKAILLE.

Mrs Dallas having undertaken to procure a wife for M'Kaill's son, of a certain description; old Mackaille, the father, granted a missive for money, payable to Dallas's husband. A wife being provided, and young Mackaille being married, action was brought upon the missive; but, upon report of Lord Kaimes, the Lords found, "That the office undertaken by Dallas was *contra bonos mores*, and that no action lay upon the missive, and found expenses due." And to this they adhered on a reclaiming petition.

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1779. *July 27.* SIBBALD *against* MR WILLIAM WALLACE.

SIBBALD, a partner in a house at Gottenburgh, had been applied to, by Betty Irvine, a shopkeeper in Edinburgh, for goods, upon credit, which he delivered without security. She applied to Mr William Wallace, who cautioned her

against smuggling, and she assuring him that she had no such intention, he gave her a letter to Mr Sibbald, that, upon his furnishing goods, he became cautioner for payment to a certain extent. Sibbald, whose residence was in Scotland, instead of making furnishings to Miss Irvine at Gottenburg, procured to her an assignment to a bill of lading of a certain quantity of tea, deliverable in the Firth of Forth, sea risk and seizures excepted, by which he plainly indicated his knowledge that the goods were seizable, as being unlawfully brought into the Firth of Forth. The teas actually were seized, and no part of them ever came into Miss Irvine's possession. She became bankrupt, and left the country. So the question occurred betwixt Mr Wallace and Mr Sibbald. Mr Wallace contended, that here was clearly a smuggling contract between Sibbald and Irvine,—that no action lay upon it, even against her, much less against him who was only a cautioner. He was not only actually innocent of any accession to it, but he cautioned her against it; yet such was the favour of the Court for a foreign merchant, that, all these unfavourable circumstances notwithstanding, decree went in his favour, 27th February 1779. (The Lord Justice-Clerk, Ordinary, had given his judgment the other way, 30th July 1777.) But this day, upon advising petition and answers, the Lords altered, “And found that, in this case, no action lay against the defender upon his letters of credit, and therefore assoilyied.”

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1779. *July 28.* THOMAS STODDART *against* M'QUAN, BECK, and COMPANY.

THOMAS Stoddart, writer in Dumfries, against M'Quan, Beck, and Company, merchants in Kirkcudbright. By agreement between this company and Currie, Park, and Company, merchants in Nantz, a cargo of tea, &c. was to be shipped at Nantz and landed in Scotland,—and Park and Company were to have a share in the profit. At accounting, M'Quan, Beck, and Company granted bill for a balance, which came by indorsation to Stoddart, as trustee for them. In an action at his instance for payment of the bill, “The Lords, in respect the bill was granted in implement of a smuggling contract and adventure, in which Messrs Currie, &c. were concerned, found, That no action lay upon the bill, therefore they assoilyied.”

In this case the favour of the foreign merchant was taken off by their being partners in the smuggling adventure.

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1780. *June 22.* CAPTAIN MITCHELL *against* MORGAN.

CAPTAIN Mitchell, of the Fox East Indiaman, employed his steward, Morgan, when the ship arrived in the Thames, to smuggle his, the Captain's, private adventure of china, &c. Morgan did so: they differed about the accounting for the produce. The Captain brought his action against Morgan: but the