

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.”

---

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.

---

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 accompting for the produce. The Captain brought his action against Morgan: but the