

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

Lords found that no action lay. They held it to be a clear smuggling contract. This seems to me to be a strong case, and deserves reconsideration.

PATRONAGE.

1776. *August 2.* The PRESBYTERY OF STRATHBOGIE *against* SIR WILLIAM FORBES.

IN determining a case between the Presbytery of Strathbogie and Sir William Forbes of Craigievar, patron of the parish of Grange; the Lords were of opinion, that a general power of factory was not sufficient to entitle a factor to present in absence of his constituent,—and, that still less was such power competent to a *negotiorum gestor*, or to a factor, continuing to act as factor, after the factory was expired; and therefore, where, as in this case, Lady Forbes, in virtue of a general factory from her son, who was abroad on his travels, but which factory was truly expired, though she continued to act under it, did present to the church of Grange within the six months,—the Lords found that the *jus devolutum* took place notwithstanding; and that any ratihabition by Sir William, after the six months, did not draw back, and had no effect. Some of the Lords seemed to consider the *jus devolutum* as a forfeiture, and were desirous of laying hold of any pretext to evade it; but the majority were of a different opinion, and thought, that, if a latitude of this kind was allowed, there would be an end of the *jus devolutum* altogether.

Lord Covington gave his opinion, that the six months were strictly to be adhered to, and that no time was to be allowed for giving the patron notice of the vacancy; at the same time he was, in this case, of opinion, that the *jus devolutum* had not taken place: he considered it as a forfeiture, and that even the act and deed of a *negotiorum gestor* was sufficient to prevent the lapse of it. Lord Gardenstone and Lord Auchinleck were of the same opinion. Lord President inclined to think, that the general factory was sufficient; but his difficulty lay in this, that the factory was expired.

In a *vice* patronage, each patron is patron of the whole parish, and may present to every *vice*, provided that the other does not interfere and hinder him. It is *jus tertii* to the Presbytery and every other person. It is also to be observed, that, although the patrons present *per vices*, each patron has the disposal of the vacant teind of the parish of which he was patron before the annexation. This is Lord Braxfield's opinion. It may also be maintained, that, as each patron has his turn *per vices*, if the patron whose turn it is lie by and do