

“sums, principal and interest, conform to the conclusions in the second alternative of the libel; reserving all objections *contra executionem*.”

The defenders, in a reclaiming petition, pleaded, *1mo*, The use to be made of a decree, when obtained, cannot confer a jurisdiction otherwise incompetent. A declarator of marriage or divorce, or a question strictly maritime, could not be brought before the Court of Session, in the first instance, although it were the sole object of the decree to obtain such diligence as can proceed from this Court alone. Upon the same principle, the present action is incompetent. By 6th Anne, C. 26. § 6, 7. debts due to the Crown can be sued for only in Exchequer; and as the forms and rules of the law of England, which are not presumed to be known in the Court of Session, prevail in Exchequer, there is more reason for excluding action on them here, than in the other supposed cases.

It is true, that by sect. 8. of the statute, debts due to the Crown can be made effectual against landed property, only according to the law of Scotland; but this is not inconsistent with the former; and, when the pursuers have constituted their debt in Exchequer, the petitioners will not dispute, that an adjudication for it will be competent only in this Court.

2do, At all events, the present action is precluded by the previous claim in Exchequer; 16th January 1751, Bisset and Edwards against Grosset, No. 78. p. 7341.

Nor does the reservation of objections *contra executionem* remove the defences. Decrees with such reservations, are granted only in second adjudications where there is danger from delay, and presuppose the competency of the Court to constitute the debt. They are never granted in first adjudications; because there the debtor is entitled to insist for a special adjudication, setting aside lands sufficient to answer the debt, with one-fifth more, which can only be done when its precise amount is previously ascertained in a competent action. And as no adjudication has been taken against Admiral Stewart's estate, if the pursuers were to attempt one, this mode would be adopted by his trustees.

At advising the petition, an opinion was given in favour of the competency of the action; but the petition was refused without answers, on the ground that the interlocutor reserved all objections, and that there was no harm in allowing the decree to go out *valent quantum*.

Lord Ordinary, *Armadales*. For the Petitioner, *Jos. Clerk*. Clerk, *Mennies*.

D. D.

Fac. Coll. No. 41. h. 316.

1800. July 9. ARMSTRONG and SON, and Others, against THOMAS MOFFAT and Others.

THE society of Fleshers at Dalkeith, have, for time immemorial, been accustomed, in October annually, to make a contract with the candlemakers established

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in a previous action against them for the same debt.

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A Baron-Bailie has power to

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there, for delivery of the tallow from the cattle slaughtered by them, at a fixed price, for the subsequent year, the candlemakers being entitled to search the tallow delivered to them, and to return; and receive discount for any impurities left among it.

In October 1799, the usual contract was made for the ensuing year.

In December 1799, the candlemakers presented a petition to the Baron-Bailie of Dalkeith, who is appointed by the Duke of Buccleuch, the superior, craving that, in imitation of a late regulation in Edinburgh and Glasgow, he should appoint two persons, one chosen by the fleshers; and the other by the candlemakers, to search the tallow upon oath.

The Baron-Bailie complied,

The fleshers having resisted the regulation, the candlemakers, with concurrence of the procurator-fiscal, applied to the Sheriff of the county to interpose his authority to it.

The fleshers disputed the right of the Baron-Bailie to make the regulation; and maintained, that they were at least entitled to an addition of from 4*d.* to 6*d.* a-stone, during the subsistence of the contract for the current year, as the higher value of tallow, after passing through the hands of official searchers.

The Sheriff "found the regulation adopted by the Baron-Bailie by appointing searchers, is proper and expedient; therefore interposed his authority thereto, and ordained the defenders to carry their rough fat to the weigh-house of Dalkeith, there to be inspected and cleaned, under the penalty of 5*s.* Sterling for each contravention, besides confiscation of the tallow so delivered without being searched."

A bill of suspension having been passed, a petition was presented, upon which parties were heard at the bar, when the jurisdiction of the Baron-Bailie was disputed, and memorials were ordered.

The Candlemakers contended, That by 20th Geo. II. c. 43. § 20. wherever a Baron has right to hold markets, as in the case of Dalkeith, the jurisdiction necessary for regulating the police of them, is reserved to him, and his Baron-Bailie; that accordingly the Baron-Bailie of Dalkeith was in the practice of preventing unmarketable commodities from being exposed there, and even of seizing tallow not sufficiently purified, and that the regulation complained of, was merely a better mode of securing the tallow being exposed in a proper state, than his former occasional exertions of authority.

The Fleshers did not now dispute the jurisdiction of the Baron-Bailie, but they contended, that they were in justice entitled to have the regulation suspended, or an additional price for their tallow, during the subsisting contract, as neither the candlemakers nor the public were entitled to receive, at the contract price, the article of superior quality to what was in view when the contract was formed.

The Court were clear as to the power of the Baron-Bailie to make the regulation, and of the expediency of it. The only doubt was as to the claim of the fleshers for a compensation during the subsisting contract.

The Lords refused the bill, reserving the claim of the suspenders for an additional price.

Lord Ordinary, *Ankerville*. For the Candlemakers, *Lord-Advocate Dundas*. Alt. *Baird*.
D. D. *Fac. Coll. No. 190. p. 437.*

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1801. *February 14.* LAURENCE TURNBULL *against* JOHN BROWN.

LAURENCE TURNBULL brought an action before the Justices of the Peace acting under the small debt acts (35th Geo. III. C. 123; and 39th and 40th Geo. III. C. 46.) against John Brown, writer and messenger. The libel concluded for "Five pounds of damages for fraudulently taking up money, and allowing another messenger to do the same in a cause of law-burrows, and keeping up a bond of caution, by which means the complainer's wife Janet Turnbull was committed to prison, when in a bad state of health."

The Justices decerned against Brown for £3.

Although the statutes above referred to, declare that the sentences of the Justices are reviewable only by reduction, Brown complained of their judgment by a bill of advocacy, on the footing that they had exceeded their powers. The statutes, he contended, conferred on them a jurisdiction only in small questions of debt arising out of the ordinary transactions of life, but the present action, although its immediate patrimonial consequences were insignificant, arose, not from a contract, but from an alleged delict of the defender in his professional capacity. As deeply affecting his reputation, it was therefore a question of too serious a nature, for the Legislature, to intend, that, even in the first instance, it should be decided according to the summary forms of the Small-debt court.

Two of the Judges, moved by the complainer's reasoning, were for passing the bill, but the Court refused it by a considerable majority.

Lord Ordinary, *Balmuto*.

R. D.

Fac. Coll. No. 220. p. 498.

1804. *March 6.* PLUMBER and Another, *against* HASTIE and Another.

A REGULATION of police was made in the year 1799 by the Baron-Bailie of Dalkeith, for the purpose of preventing the butchers of that place from exposing to sale tallow in an impure state, which it seems they had been accustomed to do, by mixing with it certain extraneous matter, increasing its weight, and diminishing its purity. For this purpose, two searchers were appointed by the

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It is competent for Justices of the Peace, under the small debt acts, to award damages limited to 5*l.* against a messenger for professional misconduct.

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Regulations of a Baron-Bailie for ascertaining the purity of commodities previous to their