

If the charger had received the fees in question, and afterwards refused to account for them, the heritors might have brought an action against him before the Justices. The implied obligation upon the suspender was precisely of the same nature. It is admitted, that the charger has been accustomed to receive part of what is claimed, and it was owing to the suspender's failing to appear that the exact amount was not ascertained.

THE LORD ORDINARY found the letters orderly proceeded.

Upon advising a petition, with answers, several Judges doubted the application of the statute; but a great majority thought the suspension incompetent. The claim, as brought before the Justices, (it was observed), had nothing feudal in its nature, and resolved into a question of personal debt. Being therefore competently laid, the Justices were warranted to pronounce decree in absence, in terms of it. The possession of the treasurer as to part of the fees is admitted. A declaratory action would be necessary to alter the practice.

THE LORDS adhered.

Lord Ordinary, *Metbuen.*
Clerk, *Colquhoun.*

For the Charger, *D. Douglas.*

Alt. *Ja. Millar.*

D. D.

Fac. Col. No 48. p. 112.

1798. *March 7.*

GILBERT OGILVIE, Collector of Excise at Aberdeen; *against* GEORGE MOLLYSON.

THE collector of Excise at Aberdeen brought a complaint before an ordinary meeting of the Justices of Peace of Kincardineshire, against George Mollyson, for dealing in foreign spirits without a license; and the offence being proved, they fined him L. 15 Sterling.

Mollyson offered an appeal against their sentence to the Quarter Sessions, which being refused by the clerk to the Justices as incompetent, he complained by a bill of suspension; and

Pleaded; At common law, an appeal to the Quarter Sessions is competent against every decision of the Justices, and this right is not taken away in excise questions by any statute. Indeed, the act 12th Cha. II. c. 23. declares the judgment of the Quarter Sessions, in such questions, to be final; and if it had been intended that the sentence of an ordinary meeting of the Justices should be so also, the statute would have so enacted. The 6th Geo. I. c. 21. too, expressly points out the mode in which the Quarter Sessions should conduct themselves, in a certain description of appeals from the Justices, in excise questions, which evinces that they have a general power of review in all matters of revenue.

The suspender likewise averred, that his citation before the Justices bore merely, 'for acting against the excise law;' which, he *contended*, rendered an appeal the more necessary, as the vague nature of the citation made it impos-

No 342.

No 343.

An appeal from an ordinary Justice-of-Peace Court to the Quarter Sessions, in revenue matters, is incompetent, unless where it is expressly authorised by statute.

No 343.

sible to prepare defences ; consequently, many circumstances, which led to the original conviction, might be obviated on appeal.

The charger, Mr Ogilvie, on the other hand, stated, that the suspender's citation bore the express offence for which he was summoned ; but that, although it had been in the general terms stated by him, it would have been sanctioned by the common practice in excise questions. And he further

Answered ; The jurisdiction of the Justices, in matters of revenue, is entirely statutable ; consequently, unless where a power of review is specially given to the Quarter Sessions, they cannot interfere. But the 12th Cha. II. while it expressly gives a right of appeal to them from sentences of the subcommissioners of Excise, gives no such appeal from those of the Justices. And it has accordingly been repeatedly found, that an appeal from their sentences is incompetent. Forbes, 25th January 1710, Paterson against Ramsay, No 310. p. 7594. ; 3d February 1778, Macarthur against Stewart* ; 20th June 1779, Connells against Campbell, Quarter Sessions of the county of Edinburgh ; 15th August 1781, Harrison against Reid* ; and November 1788, Harrison against M'Intyre* ; K. B. Termly Reports, v. 2. p. 504. ; 3d May 1788, King against Justices of Surry.

The 6th Geo. III. c. 26. merely points out the mode in which certain appeals shall be conducted which are allowed by express statutes ; Hutchison's Treatise on Excise Laws, c. 18. ; and therefore it in truth confirms the charger's general argument.

THE LORD ORDINARY refused the bill.

THE LORDS, on advising a reclaiming petition with answers, on the grounds stated for the charger, almost unanimously adhered.

Lord Ordinary, *Armadales*. For the Charger, *Lord Advocate Dundas*. Alt. *Hay*.
Clerk, *Colquhoun*.

R. D.

Fac. Col. No 67. p. 156.

No 344.

Lieutenancy and Justices of Peace, under the militia acts, are not competent to try a schoolmaster, upon a charge of giving a false certificate of baptism to exempt a militia man.

1801. November 18.

DAWSON against MUNRO.

ALEXANDER DAWSON, who is session-clerk, as well as keeper of the register of baptisms in the parish of Dunnottar, was accused of having given a false certificate, by which the name of a person, who was within the legal age to be balloted for a militia-man, was struck out of the amended list made up under the militia acts 37th and 39th of the King. The schoolmaster, or the chief constable of each parish, and where there is no chief constable, some other officer of the respective districts, is obliged by these statutes, on requisition by the Deputy-lieutenants, to make out fair and true lists of all the men of a certain age ; they are to attend when these are amended, as well as when balloted

* Examine General List of Names.