1807. *December 15.*

DUKE of QUEENSBERRY and LORD HOPETON, *against* The OFFICERS of STATE.

No. 19.
An action of declarator of immunity from taxes imposed by British statutes is not competent in the Court of Session.

THE Duke of Queensberry and the Earl of Hopeton, proprietors of the lead mines of Sanquhar and Leadhills, raised an action in the Court of Session to have it declared that they were entitled to export the lead produced by their mines, without paying any duty to the King. The Duke of Queensberry founded his claim upon an act of the Parliament of Scotland, passed on the 25th March 1707. The Earl of Hopeton rested his upon clauses of immunity in a variety of charters from the Crown, the last of which was dated in the year 1695. Duties to a certain amount, on the exportation of lead from Scotland, had originally been imposed by Scotch statutes before the Union. But these were repealed by the 6th clause in the act of Union, when the duties then existing in England were extended over Scotland in their stead. A variety of subsequent British statutes had imposed additional duties on the exportation of lead. From all these duties the pursuers claimed an immunity.

The cause came before the Inner-house by report from the Lord Ordinary. At advising, a doubt was started, as to the jurisdiction of the Court of Session in the cause, which appeared to some of the Judges to belong exclusively to the Court of Exchequer. A hearing in presence, and afterward memorials, were ordered in this point; on advising these, (March 10th, 1807) the judgment of the Court was, "The Lords having advised this memorial for the "Officers of State, together with that given in for the pursuers, they find that "the action of declarator now insisted in is competent to proceed in this "Court; therefore sustain their jurisdiction as competent to decide therein, "and repel the objections."

The cause was again brought before the Court by petition and answers.

Argument for the Officers of State.

I. The present Court of Exchequer of Scotland have an exclusive jurisdiction in questions relating to the King's revenue. The jurisdiction of that Court is derived from two sources; 1*st*, From the power of the old Scotch Court of Exchequer, in the room of which it was substituted; 2*dly*, From the acts of Parliament creating the present Court. It does not appear necessary to enter into an investigation as to the nature of the first. The jurisdiction of our Scotch Court of Exchequer seems never to have been very well defined; and the Court of Session do not seem to have treated it with much respect.

By the sixth article of the act of Union, it was provided, that all the English revenue laws should extend to Scotland. These laws were entirely adapted to English procedure; indeed, part of them consisted in rules of English procedure, and therefore a Court in the English form became absolutely necessary for enforcing them in Scotland. Accordingly it was provided in the 19th

No. 19. article, "*That there should be a Court of Exchequer in Scotland for deciding ques-*
"*tions concerning the revenues of customs and excise there, having the same power*
"*and authority that the Court of Exchequer in England has.*"

In pursuance of this article of Union, the statute 6th Q. Anne, ch. 26. was passed, by which the Court of Exchequer in Scotland is created after the exact model of the English Court of Exchequer, and is declared to be a Court of revenue and *judicature* for Scotland. Its jurisdiction is explicitly defined in the words of sect. 6. The whole of this jurisdiction bestowed on the Court of Exchequer is *exclusive jurisdiction.* The subjects of it are declared over and over again to be ANNEXED to the said Court; a term which, if they are not subjected to its jurisdiction exclusively, can have no meaning at all, since they had previously been subjected to it simply. Indeed, the very nature of this new branch of jurisdiction, as it required a new court, equally required that the old court of Scotland, which could not understand it, should be excluded from meddling with it. Part of it consisted in the official management or superintendence of the officers of revenue, which it is impossible to suppose could be intended to be shared by any other Court than the Exchequer, and yet it is all bestowed by the same form of words. One part is not more annexed than another.

The 17th section of the same act accordingly, which confirms the extension of the whole revenue law of England to Scotland, takes it for granted that these laws were to be cognizable *solely* in the Court of Exchequer. It provides, in the same breath, that they shall extend to Scotland, and be cognizable in the Court of Exchequer:

That the jurisdiction of the Scotch Court of Exchequer was meant to be exclusive, may also be inferred from this, that even in England where all the Courts have similar forms of procedure, and the same law, yet the Court of Exchequer has an exclusive jurisdiction in matters of revenue. It is true, that there the other courts do not decline judging in cases of this nature, but in practice they are prevented from doing so by injunctions granted by the Court of Exchequer, prohibiting the parties from proceeding in those cases in any other Court *. By the use of this form questions of revenue there have always been exclusively appropriated to the Court of Exchequer in practice, so that there can be no reason to doubt what the Legislature intended should take place when they annexed them to our Court of Exchequer. The reasons for appropriating revenue causes to the Exchequer in Scotland were far stronger than in England, and they admitted here of no exception. A simple annexation, therefore, superseded in this country the English mode of vindicating the Exchequer's jurisdiction.

This distinction between the situation of the courts of England and of Scotland, sufficiently appears in another section of the statute, to wit, section 7th,

* See Anstruther's Reports, case of Cawthorn *v.* Campbell, V. 1. p. 205.

where, in providing that the King shall have the same prerogative in procedure that he has in England, it enacts that all suits for any revenues payable to the Crown shall be in the Court of Exchequer. This is just an instance of the general annexation of such actions to the Court of Exchequer, and it is the strongest case of it; for, in England, the Crown may sue in any court, though it can be sued only in Exchequer. It cannot be supposed that it was meant to allow the Crown in Scotland to be sued in any other court, when it was not allowed to sue but in Exchequer. No. 19.

This interpretation of the statute has accordingly been adopted both by Bankton and Erskine, and it has regulated the practice of these courts. See Bank. Vol. 2. p. 534. Ersk. B. 1. T. 3. § 36. See also the case of the Receiver-General of the Customs against Fogo, No. 305. p. 7589. Mitchell against Commissioners of Supply, 27th June 1743, No. 306. p. 7590; Ramsay against Adderton, 17th July 1747, No. 307. p. 7590; Eyers against Hunter, 19th January 1711, No. 314. p. 7596.

If the Court of Session had possessed a jurisdiction in revenue matters, the records of this Court would have been full of actions of this kind,—suspensions, advocations, actions of all kinds; and above all, declarators relating to the revenue would have been common, instead of which they are quite unknown.

Nor can it be said that such actions have been excluded by section 6th merely, for they would have been actions not *by*, but *against* the Crown. In the case of Ramsay against Adderton, the action was against the Crown, and yet the Court refused to receive it. The opinion of Lord Kilkerran in that case is quite free from any distinction; nor is there any vestige in our practice of any such distinction with regard to the exclusive jurisdiction of the Exchequer in revenue cases. It is evident, therefore, that the practice of the Court of Session, ever since the Union, has proceeded upon the above interpretation of the clause annexing revenue jurisdiction in general to the Exchequer without any exception of actions against the Crown.

This jurisdiction, which is shewn to be exclusive, comprehends in the amplest terms all power, judicial and otherwise, for hearing and determining of all actions and questions in law or equity touching the King's revenue, and in particular the revenue of customs, sect. 6th. The same thing appears in sect. 17th.

II. The present question falls under this exclusive jurisdiction. For it is a question in law touching the revenue. It is a question arising out of those English statutes, of which the cognizance was given to the Exchequer, and out of subsequent British statutes, which it cannot be denied were intended by the Legislature to be in exactly the same situation. It is a declarator of the meaning of those statutes. It can be nothing else; for it is impossible that the Court can declare an immunity from subsequent statutes, unless the meaning of these statutes be declared. Unless that be declared, it matters nothing

No. 19. what was the original purport or validity of the grants of the pursuers. A declarator of that alone is in itself quite ineffective, and it might turn out perfectly nugatory. At all events, that is not the nature of the present action, which expressly demands an immunity from those statutes, and is directly intended to take away a part of the revenue of customs.

It is said that this is a declaratory action, not a petitory action; but there is no distinction in the statute between one and the other, and the terms of it equally embrace both. It is true that the Scotch form of declaratory actions is not known in the Court of Exchequer; but the same questions which are tried by that form may be substantially determined by the forms which are known in Exchequer. There was no reason, therefore, why the statute 6th of Queen Anne should not commit all questions relating to the revenue to the forms of the Court of Exchequer, the only forms that are known in England. Nor can we complain of this, since by the treaty of Union it was agreed, that in matters of revenue, Scotland and England should be on a level.

Further, if petitory actions in revenue cases be incompetent, declaratory must be so too; for if they are not, then every action may be turned into a declaratory form, and the exclusive jurisdiction eluded altogether. In fact there is a declarator included in every petitory action; and it would only be necessary to leave out the petitory part of the conclusions.

If declarators were thus allowed where petitory jurisdiction was exclusively appropriated to another and not inferior Court, a collision of jurisdiction would take place in opposition to the principle upon which it is observed by Lord Kaimes all our jurisdictions are arranged, Law Tracts, p. 243. For the same question might be tried in two courts at the same moment, and determined opposite ways; one might declare the immunity, while the other might levy the duties; or a declarator of immunity might follow after the duties had been ordered by Exchequer to be levied. Here would be a complete collision; neither court would be bound to yield to the other.

III. Nor does this action come under any of the special exceptions to that jurisdiction in revenue matters created by the statute.

The first of these, in section 8th, is not said to have any application to this case.

The only other exception, which in section 22d, is equally inapplicable. This is not a question regarding "the validity or invalidity and preference of "the title of the Crown, to any honours, manors, lands, tenements, hereditaments, or casualties." It relates to the revenue of customs which cannot come under any of these denominations. This clause in the statute, on the other hand, relates to that part of the income of the Crown commonly called Crown rents and casualties, not to the public taxes—to the private patrimony, not the public revenue of the Crown.

It has been said that the titles of the pursuers are infeftments; and that by acts 1640, 22, and 1661, 59, the Exchequer cannot judge in questions concerning the validity or invalidity of infeftments.

No. 18.

But these statutes apply only to the old Scotch Court of Exchequer, and have no application to the present. The act 6th Queen Anne contains no notice of them, nor adopts any limitation in the jurisdiction of Exchequer, but those already mentioned. Besides, this question is not a question concerning the validity or invalidity of infeftments. It relates to immunities from custom which have no necessary connection with infeftment. That of the Duke of Queensberry rests on a Scotch act of Parliament, that of the Earl of Hopetoun was originally contained in a tack.

But if there was ever any reason for doubting that the jurisdiction of the Exchequer embraced this case, that doubt has been determined by a sufficient authority. For this very case, in so far as relates to the Earl of Hopetoun, has been repeatedly before the Court of Exchequer. Nay it was judged of by the Scotch Court of Exchequer, before the Union, and before the act 1706, while the acts 1640 and 1661 were in full force. In the year 1694, the Court of Exchequer were aided in investigating it by a committee of Lord President Stair, Lords Newliston, Anstruther, and Fountainhall, who drew up a report on the subject, bearing that the exemption might be secured by an act of Exchequer. The case of Pitferran is another instance where the jurisdiction of the Exchequer has been without objection sustained in a similar question *.

Argument for the pursuers.

I. & II. The Court of Session was originally instituted (act 17th May 1532.) with a universal jurisdiction in all questions of civil right. This was declared by express statute, (act 1567, Ch. 18.) in relation to infeftments ratified in Parliament, the only cases in which it was ever disputed; and this universal jurisdiction was undisputed at the period of the Union.

Previous to that period, the Scotch Court of Exchequer never sat as a regular court of law †. The duties they performed were chiefly ministerial. They were, in short, very similar to a chamber of accounts. The Lords Treasurer and auditors appear to have possessed the same powers possessed by the Lords of the Treasury at present, and to have exercised them in nearly the same way. See 7th Parliament of James V. Ch. 94; and 11th Parliament of James VI. Ch. 63, 64, 65, 78.

This Exchequer of Scotland at one time, indeed, received some considerable powers, by act 1st Charles I. ch. 18. But these were soon taken away by act of the Estates 1640, ch. 22. re-enacted by act I. Charles II. chap. 59. (see Lord Stair, B. 4. Tit. 1. p. 29.) The statute 1672, chap. 16. was made for regulating the judicatures of Scotland; but it has no provision, nor even p[illegible]ce, relating to the judicial power of the Court of Exchequer.

* In this case an exemption from duty on coals, founded on an act of exemption under the privy seal, dated 21st December 1706, ratified in Parliament 21st March 1707, and followed by possession of exemption, was sustained by a judgment of the Barons of Exchequer, dated 21st July 1738.

† See records of Exchequer,—account of it in the report on the records of the kingdom, p. 413.

No. 19. Sir George Mackenzie, in one place, (Mackenzie's Crim. Law, part 2. Tit. 7.) observes that the members of the Exchequer are only his Majesty's chamberlains; and in another (Mackenzie's Obser. 1 Charles I. chap. 18.) he says that though they are competent to discuss suspensions of customs or other parts of the revenue, where there is clear law or constant use of payment, yet the Court of Session are judges competent to clear what is law, or to interpret acts of Parliament.

Even in these cases, it does not appear they had any exclusive cognisance, for such suspensions were competent and usual in the Court of Session, Act of Sederunt, 6th December 1677, and see State of Scotland, p. 114.—The only instance where there is any appearance of the Court of Exchequer calling in question the jurisdiction of the Court of Session, appears in the letter from Charles II. to the Lords of Session; and in that letter the determination of the King is adverse to the claim of the Exchequer. (See note I. at the end of this case.)

Lord Stair has also reported a number of cases relating to the revenue, which were tried, it appears, without objection, in the Court of Session.—(See note II. at the end of this case.) It seems therefore not to be uncertain, but quite clear, that the Court of Exchequer, prior to the Union, had no exclusive jurisdiction, properly so called, at all.

But it is still clearer that the *declaratory* jurisdiction of the Court of Session was universal, and was not excluded in any branch by that of the Court of Exchequer.

It is necessary to attend to the nature of this latter kind of jurisdiction, which in the first place, is not merely superfluous, nor differs only in form, but essentially from *petitory*. The direct subject of investigation in a petitory, and in a declaratory action, can never be the same. The judgment prayed for, and the inconvenience to be remedied, are different. If this action were petitory, the demand would be for payment, or for repetition of certain specific sums of duty, the general right of the Crown to levy such duties, or of the subject to exemption, would be considered only incidentally. But being declaratory, the direct object of it is to ascertain a general right or privilege, and it has no relation to any specific sums of duty. The judgment can affect only this general right, and cannot supersede actions in particular cases, but only prepare for them.

Nor can petitory actions supersede declaratory. Various cases may be figured, in which parties may have the strongest interest to have their rights ascertained, where yet they cannot bring a petitory action. This is indeed quite notorious in our practice. It has been a maxim in the law of some countries, and particularly in the civil law, that he who is in possession has no occasion for an action. Hence, with the civilians, all actions are said to be petitory, although certain declaratory ones were of necessity admitted even by them. In this country, we hold, on the contrary, that the owner is entitled, not only to possess, but to have the quiet and secure possession; and we therefore admit of declarators in all cases where it is conceived necessary to preclude future challenge of a right.

No. 19.

Nor is there any thing negatory in the existence of a declaratory jurisdiction distinct from a petitory. The instance of the commissarial jurisdiction sufficiently proves this, for it is chiefly declaratory, and extends to the declaring of general rights, which the commissaries are far from having the power of enforcing by any petitory jurisdiction. It is sufficient that other courts are bound in law to consider the declaratory judgment as a *res judicata*, and to apply it without a new discussion in all the petitory questions involving it. So long as no declaratory judgment is pronounced by the proper court, other courts, having petitory jurisdiction, may decide the same point incidentally in petitory questions; but wherever it is pronounced, their judgments in these questions must be regulated by it; so that there cannot possibly be any collision of judgments. The observations of Lord Kames have no application to such a case as this, otherwise they would be contrary to our common and notorious practice.

Such being the nature of declaratory jurisdiction, and the Court of Session being at the Union in full possession of it, by the 19th article of the Treaty of Union it was declared, that the Court of Session "shall remain in all time coming in Scotland as it is now constituted by the law of that kingdom, and with "the same authority and privileges as before the Union." After which the words of any statute must be very express by which any part of the jurisdiction of that Court is taken away.

The 6th section, which constitutes the jurisdiction of the Exchequer, has no such explicit mention, nor indeed any mention of exclusive jurisdiction. The term "annex," merely means to join firmly. It clearly bestows this jurisdiction on the Exchequer, but does not exclude other courts.

The 7th section alone creates any exclusive jurisdiction, and this is confined to petitory actions for debts due to the Crown.

All the other parts of the act are consistent with this interpretation, and the decisions quoted on the other side were all given in cases which came under this section 7th. That of Ramsay against Adderton properly related to Justices of the Peace only, not the Court of Session, and was upon a special statute, 6th Geo. I.

On the other hand, the Court of Session judged without objection in questions arising out of revenue statutes, in the cases of Hamilton against Legrand, 4th December 1733, No. 304. p. 7589; William Reid, 19th July 1765, No. 9. p. 7861; Ogilvy against Wingate, 1st February 1791, No. 27. p. 7884; Locke against Tweedie, 3d December 1793, No. 28. p. 7889; Roberts against Jardine, 6th July 1802, No. 29. p. 7891.

These cases were held not to belong exclusively to the Exchequer, because, though not declaratory, they were not actions by the Crown or its revenue. But with regard to declaratory actions, the matter is still clearer. These could not be transferred exclusively to the Court of Exchequer, because the forms of Exchequer do not admit of any declaratory action. There is no clause in the statute simply extinguishing the declaratory branch,—a distinct and valuable branch of the jurisdiction of the Court of Session, in all questions having re-

No. 19. lation to the revenue. Sect. 6th, even if *annexing* means *exclusively annexing*, cannot affect this jurisdiction, which is not *annexed* at all to the Court of Exchequer.

As to the English Court of Exchequer, the exclusive power of that Court rests on the prerogative of the Crown, which may sue in any court it pleases, and may be sued in any court, unless an injunction is moved in Exchequer by the Crown counsel. If this is to be the rule here, there can be no doubt of the competency of the present action, since the Crown counsel have never moved for any injunction.

III. But, further, supposing the present question to fall under the general rule laid down in the 6th section of the act of Queen Anne, it does also fall under the exceptions made by the same act, from that rule.

When the extension of the English revenue law to Scotland led to the establishment of an English Court here, our ancestors were careful to prevent that important branch of our law which relates to heritable rights from being taken away in any degree, by this new establishment, from our own municipal courts.

Accordingly, the statute establishing the Court of Exchequer provides for the two cases in which this might have happened, 1st, By section 8. for the case where the Crown claimed heritable rights in execution for debt,—2dly, By section 22. for the case where it claimed such right directly by purchase, forfeiture, or any other title.

It cannot be imagined, that in this last provision it was meant to make a distinction between the case where the validity of the Crown's title was directly disputed, and that where the Crown's right depended on the disputed validity of the subject's title. In questions of servitude, for instance, whether the Crown claimed a servitude on its own title, or claimed an immunity from servitude by impugning the title of a subject to a servitude on its lands, the case would equally fall under the terms of this section 22. The present case, therefore, where the Crown claims a right by denying the validity of an heritable right in the pursuers, must fall under it: For the rights of the pursuers are undoubtedly heritable, since they are inseparably connected with lands, and are carried as pertinents of the rights of property in lands by infeftment, just as a servitude of road is. They fall strictly under the term hereditament, used in section 22.

It is very true, that the committee of Judges of the Court of Session, to whom the Lords of Exchequer referred the claim of the predecessor of Lord Hopetoun, did declare, that redress might be afforded to him "by an act of "Exchequer, without a reduction," because the Exchequer could prohibit the King's officers from levying the duties; but the very expression shews that the regular form would have been a reduction, which must have been in the Court of Session.

In the case of Pitferran, the officers of the Crown had accepted of conditional bonds for the duties, and they demanded the sums contained in the

bonds. The direct object of the action was therefore a specific debt to the Crown; and, indeed, a suit for the payment of a bond granted for duties, is one of those which the 7th section of the act of Queen Anne expressly declares shall be in the Court of Exchequer. No. 19.

IV. There is still another view which may be taken of the present question. From the provisions of the treaty of Union, in regard to these rights of exemption, the jurisdiction of this Court must extend to them, whatever construction might be put on the act of the 6th of Queen Anne when considered by itself.

This act must have been in contemplation at the time of the treaty, and only follows out and completes the measures then agreed upon. It must be explained, therefore, in consistence with the act of Union. Now, the 6th article of this act, which provides that the duties of customs and excise payable in England shall be extended to this country, or which, in other words, declares that the English revenue law is to be received in Scotland, expressly excepts such exemptions as those of the respondent. The object of this saving clause is to preserve such private rights of exemption from the operation of the English revenue law, and to leave their validity and extent to be regulated as before by the law of Scotland, and of course to be tried in the municipal Courts of Scotland, to whom the administration of that law was left.

Under this article, then, the pursuers have a right to have their exemptions maintained entire as they stood at the date of the Union, and to have this done by a judgment of the Court of Session.

Replied for the defenders.

II. The case of Reid was an action of damages, not for what was done in execution of excise duty, but for what was done under a false pretence of that duty. It appears to have been entered on the books of sederunt, in order to shew that the Court of Session did not approve of the practice of removing cases from them by injunction; but that only shews that they regarded the proper jurisdiction of the Exchequer as simply exclusive, and not requiring any such form to protect it.

The case of Wingate was brought into this Court by appeal from the Justices of the Peace, to whom a peculiar jurisdiction in such cases is given by statute. Nor does it appear that the point of jurisdiction was ever considered in that case. Besides, it was argued in that case, that the landlord's right was one which came under the first exception of the statute of Queen Anne as a *real right*; and though the argument is not a very good one, it might naturally induce the Court not to reject the cause till they ascertained whether it did so or not, since, if it did, it was supposed that the right fell under the jurisdiction of the Court of Session like a right to lands.

The two other cases, of the factor on the estate of Leslie against Tweedie, 3d Dec. 1793, No. 28. p. 7889. and of Robertson against Jardine, 6th July 1802, No. 29. p. 7891. which were decided on the authority of the case of Wingate,

No. 19. seem to have been similar to it in so far as regards the present question. They came before the Court of Session by appeal from the Justices of the Peace, to which a peculiar jurisdiction is given by statute; and in neither of these cases did any objection to the jurisdiction seem to have been at all in contemplation.

1. The exemptions saved by the act of Union, are exemptions from *duty*, not from *revenue jurisdiction*, and the jurisdiction of the Court of Exchequer extends to the interpretation of the act of Union as well as of any other act, in so far as it relates to the revenue.

On advising the reclaiming petition and answers, the interlocutor of Court was, "Alter their interlocutor reclaimed against, sustain the objections which have been stated to the jurisdiction of this Court, and dismiss the action of declarator as incompetent, and decern."

The Court was much divided in opinion; the last interlocutor was pronounced by a majority of seven to six, the Lord President being against the decision.

It was particularly observed on the Bench, on the side of the majority, which in general adopted the arguments of the defenders,

That the Exchequer certainly had an exclusive jurisdiction in matters of revenue. But that this would be taken away from them altogether, if they might in every case be controuled by a judgment of this Court, obtained in the very same question by a declaratory action. That that might certainly be done if this Court exercised an unlimited declaratory jurisdiction in revenue questions, since every action in Exchequer might be met by a counter-declaratory action in the Court of Session: That a collision and contradiction of judgments must ensue if this were permitted, because the Court of Exchequer is a Supreme Court, with full jurisdiction in relation to revenue questions, and no ways bound to alter its decisions, or rules of decision established by its own judgments, in consequence of any declaratory judgment of this Court. But that this is prevented by the exclusive transference of all questions of revenue to them, to be decided according to their forms, such as they are.

That the instance of the Commissary Court is not conclusive, because that court is not supreme, and because it has a defined and limited declaratory jurisdiction.

On the other side it was observed, in addition to the arguments of the pursuers, which were generally adopted by the minority,

That the question arises on the construction of a clause in the act of Union, not the only clause in that act which requires construction: That it would be extraordinary if it was not competent to get an interpretation of the act of Union by the Supreme Civil Court of this country: That, supposing a question as to the provision of the ecclesiastical establishment of this country were stirred, this could not be referred to the General Assembly, but to the Supreme Civil Court; or if a question were to arise on that act relative to the rights of the Court of Admiralty, that question must be tried in this Court: That, supposing an officer should levy duties, in violation of the act of Union,

the Court of Session is certainly competent to try that question: That, in the same way, it is here pleaded, that the pursuers have private rights which, by the act of Union, are exempted from the revenue law, and the Court of Session must determine whether they are so or not. No. 19.

Lord Ordinary, *Craig*. Act. *Gillies*, *Irving*, et *Murray*. Alt. *Advocatum*, *Solicitor*, *Dav. Monypenny*, et. *J. H. Mackenzie*. *C. Tait*, W. S. and *Hugh Warrender*, W. S. Agents. *S.* Clerk.

M. *Fac. Coll. No. 20. p. 51.*

*** I. The letter from the King to the Court of Session, alluded to above, is mentioned by Lord Stair, V. 1. p. 281. as follows:—A letter from the King, 14th June 1665. The Lord Ballantine, treasurer depute, compeared, and produced a letter from his Majesty to the Lords, bearing, "that his Majesty having "heard a doubt moved before him, whether declarators of ward, non-entries, "&c. should be discussed before the Lords of Session or Lords of Exchequer, "His Majesty declared his pleasure, that in the meantime, till his Majesty "got farther evidence and clearing therein, such actions should be pursued "before the Lords of Session." Which letter was ordained to be recorded in the Books of Sederunt.

*** II. The cases alluded to, in which the Court of Session judged of matters regarding revenue, are, Duke of Hamilton against Laird of Clackmannan, 14th December 1665, No. 6. p. 13092; Lord Colvil against Feuers of Culross, 15th December 1666, No. 5. p. 13063; Hamilton against Allardice, 6th December 1667, No. 6. p. 13064; Stewart against Acheson, 17th January 1668, No. 8. p. 13065; Hamilton against Maxwell, 29th February 1668, No. 11. p. 13067; Collector of Taxes against Director of Chancery, 22d January 1669, No. 6. p. 2400; Pearson against Town of Montrose, 23d June 1669, No. 12. p. 13098; Collector of Taxes against Master and Servants of the Mint, 22d January 1669, No. 13. p. 13067, &c.