

1765. *November 14.* STEVEN *against* ———.

[*Faculty Collection, IV. p. 225.*]

IN this case the Lords were all unanimous, that action lay at the instance of a foreign factor, though a Scotsman, against a Scotsman residing here, for the price of smuggled goods commissioned by him; reserving to themselves to consider what the law would be betwixt two residenters here suing for implement of a smuggling contract.

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1765. *December 5.* CRAWFORD *against* BOYD.

IN this case the Lords unanimously found, that a Scotchman who was a merchant in the Island of Man, having furnished goods to a smuggler here, though he knew very well that the goods were to be smuggled, yet as he had no concern in the smuggling, and as the goods were entirely at the risk of the smuggler, an action lay for payment of the price.

Lord Pitfour put it upon this general principle, that smuggling was not *malum in se*, but only by particular statute, and that statute did not annul the smuggling contracts, but only imposed penalties upon smuggling.

Others of the Lords thought this reason too general, because it went the length of giving action for implement of a smuggling contract, by delivery of the goods, which it was twice found was not competent.

In this case sundry other points were determined, confirming the doctrine laid down by my Lord Pitfour, concerning extrinsic and intrinsic in a case which lately occurred; particularly, it was the opinion of all the Lords, that payment made not only *de recenti* but *ex intervallo*, was intrinsic, but that compensation was *aliud negotium*, and therefore was extrinsic.

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1765. *December 17.* SIR JOHN GORDON *against* ———.

A FREEHOLDER in this county (Cromarty) claimed to be enrolled upon a divided valuation. Sir John raised a reduction of the division of valuation, which was brought into Court, and upon this ground the Michaelmas meeting of freeholders delayed to enrol the claimant. Of this judgment he complained, and this day the Lords reversed the judgment, and ordained him to be enrolled, but found no expenses due.

They went upon this ground,—that a person whose valuation is divided, is entitled to be put upon the roll, and to remain on it till that division is reduced; in