

bound to maintain his wife. The defence pleaded was a denial of the marriage; and consequently that, as the question resolved into a declarator of marriage, the Court was incompetent. The Sheriff ordered the defender to be examined, and thereupon, and production of marriage lines, decerned for the aliment. But, on an advocacy, the Lords passed the bill. They demurred greatly upon the point of jurisdiction, and thought, that, if modes of evading the jurisdiction of the Commissaries, as in this case, were allowed, it would tend to abolish the Commissary Court in one great article, and bring all questions of this sort before inferior judges; for, although cases often occur where a question, which is not in itself, *in prima instantia*, competent to be tried before a particular court, is yet the proper subject of determination when occurring incidentally; yet these cases are to be strictly interpreted; and, when plainly calculated to evade the proper jurisdiction, ought to be disallowed. See Law Tracts, Vol. I. p. 343.

1766.

MARTIN *against* WATT.

IN Summer Session 1766 a case came before the Court betwixt Martin and Watt, two custom-house officers, concerning the division of a seizure. The Sheriff of Haddington had given judgment in the merits; from him it came into Court by advocacy. The question as to competency having been suggested, the Lords ordered memorials; and, though both parties waved the declinature, the cause was dismissed, and found not competent. The Lords thought it was a revenue question, as originating from a revenue matter, and competent only before Exchequer. See ADVOCATION, *Forsyths against Shank*.

1771. February 13.

REID *against* GRAY.

By the charters of erection of the Town and territory of Kilmarnock into a burgh of barony, it is appointed that the Town Council present a leet of five of their own number to the baron at Michaelmas yearly, out of which the baron elects two bailies, and returns them to the Council; and, if the baron does not do this within a time certain, then they are chosen by the Council.

This being the set of Kilmarnock, a doubt arose how far the bailies were entitled to judge in any cause where the debt or damage exceeded forty shillings. In terms of the jurisdiction Act, and the point being stated in a cause before Lord Auchinleck, Ordinary, his Lordship found, "That the corporation or community of the burgh of Kilmarnock is independent of the baron; and, therefore, in a suspension of a decree of the bailies, he repelled the reasons of suspension." And, on advising a reclaiming petition with answers, the Lords adhered.

By the Jurisdiction Act, all jurisdiction is saved to burghs of barony which are independent of the baron. In the case of Kilmarnock, by grants from the