

fries to Kirkcudbright; the Lords, 14th July 1774, found the 14th Act Parl. 1621 not in desuetude: they appointed, therefore, intimation to be made of the process to the Kirk-sessions of Dumfries, Kirkcudbright, and Kelton, to the end they might appear for their interests. And to this they adhered.

SMUGGLING CONTRACT.

It seems now sufficiently established, that action does not lie for damages for non-implemēt of a smuggling contract. See Erskine, p. 446, § 3; Home, 34 and 180. But it is a nicer question, Whether action lies for payment of freight, (for example) on performance of a smuggling contract? see 111 *New Coll.*, No. 64; or for the price of the goods? Formerly this was sustained, Kaimes, No. 40, and Home, 155. And, of late, it has been so in the case of the foreign merchant, who sells the goods, but is no party to the smuggling; 11 *New Coll.*, 16; 4th *New Coll.*, p. 225.

But, in

SUMMER 1776, DUNCAN, Indorsee of DANIEL FOX, *against* THOMSON;

they found that no action lay between the smugglers, on a bill for the price of smuggled tea.

Thomson had granted a bill to Fox, which was indorsed to Duncan as trustee. Several defences were urged against it, but overruled. The defender reclaimed, and urged, that the bill was granted by one smuggler to another, as his share of a smuggling adventure. The Lords found, "That no action lies in this case, in respect the same is brought between smugglers for implemēt of a smuggling contract; and therefore suspended the letters."

It is said a decision was pronounced in the Court of Common Pleas, lately, to the same effect.

A seller having brought an action for the price of a parcel of muslins seized after sale, on information of the buyer,—it was determined, by a special jury, before Justice Gould, in favour of the defendant; and held to be a point established by many precedents, "That no person selling smuggled goods can bring an action legally to recover of the purchase; the property of such goods being, at all times, his Majesty's."