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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.

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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.

for, to give every information in their power, (37th Geo. III. c. 103. § 16. 18.; 39th Geo. III. c. 62. § last), and to give effect to these, and to punish any omission, it is enacted, § 28. ' That it shall be lawful for the Deputy-lieutenants, and Justices of the Peace, within any subdivision or district, or any two or more of them, one Deputy-lieutenant being one, from time to time, to issue their order or warrant under their hands and seals, requiring the attendance of the constable, burgh-officer, and other officer of any parish or place within such subdivision or district, at such time and place, as in such order or warrant shall be expressed ; and if any such constable, burgh-officer, or other officer, shall refuse or neglect to appear, according to such order or warrant, or shall refuse or neglect to return any such list, as before directed, or to comply with any such order or directions as he shall, from time to time, receive from the said deputy-lieutenants and Justices of the Peace, or any two or more of them, in pursuance of this act, a Deputy-lieutenant always being one, or shall, in making such return, be guilty of any fraud, or wilful partiality, or gross neglect in his duty, the said Deputy-lieutenant and Justices of the Peace, or any two or more of them, are hereby empowered and required to commit the person so offending to the common gaol, there to be kept for the space of one kalendar month, or, at their discretion, to fine such person in any sum not exceeding L. 5 Sterling, nor less than 40s. Sterling.'

A complaint was addressed to the Deputy-lieutenant, and his Majesty's Justices of the Peace of the county of Kincardine, in the name of Charles Munro, the procurator-fiscal, concluding for punishment as the nature of the crime should merit.

A deliverance was given on this complaint, 7th March 1800, by the Justices, appointing it to be served. A bill of advocation was presented by Dawson, objecting to the competency, which, upon answers and replies, was refused, 9th June 1800 ; but, upon a petition, the Court, 28th June, remitted to the Lord Ordinary to pass the bill of advocation.

Letters of advocation were expedite. The question came before Lord Armadale, 23d January 1801, who, before answer, appointed the pursuer to state in a condescendence the facts he offers to prove. ' The Lord Ordinary, (12th May 1801), having considered this condescendence, with the answers thereto, finds the complaint, exhibited against the defender Alexander Dawson to the Deputy-lieutenants and Justices of Peace of Kincardine, is a competent complaint, under the statutes founded on ; and therefore remits the cause simpliciter to them, to proceed therein according to law.'

Dawson reclaimed to the Court, and

Pleaded ; The powers conferred by the militia acts upon the court of Lieutenancy and Justices of the Peace, were only for the purpose of carrying these laws into effect ; but conferred no jurisdiction upon them to try an offence long after all the purposes of the acts have been fulfilled. The ordinary civil courts of the country are open for the punishment of such offences ; and, in the pre-

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sent case, the advocator is also amenable to the ecclesiastical courts. The statute only enacts, that if a constable or other officer failed to appear, or to return a list, or if he made a wrong return, so as to impede the carrying the acts into effect, he was to be punished *de plano*; but the act does not mention schoolmasters or session-clerks as punishable for the offences there mentioned, but only the constable, burgh-officer, or other officers; and being mentioned by name in other clauses, they cannot be comprehended under this general appellation of 'other officers,' in this clause.

Answered; Schoolmasters are officers employed under the Lieutenants, for the execution of the militia acts. They, as well as constables, can be compelled to make returns; for so it is expressly provided; and they must, therefore, like the constables, be liable to punishment, if they make false returns. The act could not have been carried into effect, if any fraud committed by them could not be repressed by the Justices. It is at common law an inherent right in every Magistrate to punish all those who act under him, for malversation in their office. Nor was it the original fraud only in making the return which was intended to be punished, but also any device which should impede the execution of the law, as this prevents equally a fair return for ballotting. The jurisdiction given by the statute, is not altogether a summary one; for § 65. provides, that all prosecutions shall be commenced within six calendar months after the fact is committed.

Observed from the Bench; The clause in question does not apply to the schoolmasters, but to officers of an inferior kind, and does not mean to confer a jurisdiction for trying the crime of falsehood, especially by a formal *ex post facto* proceeding.

THE LORDS advocated the cause, and asscizied the defender.

Lord Ordinary, *Armadale*.

For Dawson, *Monypenny*.

Agent, *Pat. Orr, W. S.*

Alt. Lord Advocate *Hope, Burnett*.

Agents, *Geo. Robinson, W. S. Ro. Ainslie, W. S.*

Clerk, *Gordon*.

F.

Fac. Col. No 2. p. 4.

No 345.

Unless the most apparent iniquity has been done in the execution of the small debt act, by the Justices appointed to carry it into execution, no appeal from their sentence ought to be received.

1803. *January 19.*

JOHNSTON *against* KELLOW.

FRANCIS JOHNSTON in Skypolton was brought before the Justices of Peace for the district of Old Deer in Aberdeenshire, at the instance of William Kellow in Slampton, for payment of L. 2 : 1 : 8, which sum he was ordained to pay, (7th October 1799).

Alleging that the sum, if due, was money owing not by himself, but by his father and mother, and that the conclusion against him was founded upon a supposition that he had intromitted with their effects, Johnston brought an action for reduction of this decree, as the rules of passive representation are of