

No 88.

The argument contained in them was not, in any thing material, different from that which occurred in the case of Cantley, 11th February 1790, No 87. p. 955^o.

On advising the memorials, the LORDS, by a small majority, passed the bill."

Reporter, *Lord Justice-Clerk.*

Act, *Abercromby.*

Alt. *Cullen.*

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Fol. Dic. v. 4. p. 32. Fac. Col. No 144. p. 286.

No 89.

1791. *January.* NISBET'S CREDITORS *against* ROBERTSON.

An heritable bond was granted for the price of smuggled goods by a merchant in Scotland to his correspondent in Holland, who was accessory to the importation; the bond was assigned for value to a third person, who took infestment on it. On the bankruptcy of the debtor in the bond, the trustee for his creditors brought reduction of the security on the score of its being *pactum illicitum*, and the LORDS reduced it accordingly. See APPENDIX.

Fol. Dic. v. 4. p. 33.

1793. *May 15.*

ATTORNEY OF THOMAS CULLEN & Co. *against* DAVID PHILP.

No 90.

A merchant settled abroad, whether a foreigner or a native, who is accessory to smuggling goods into this country, has no action for the price of them.

THOMAS CULLEN and Company, merchants, at Ostend, had been in the practice of supplying David Philp at Boarhills in Fifeshire with contraband goods, sometimes on commission, and sometimes at shore price, that is, a price payable on delivery of the goods in Britain, and sufficiently high to ensure the vender against the risk of seizure.

Captain Oldfield always had the charge of the vessels employed by Cullen and Company on these occasions. By a letter from Cullen and Company to Philp in January 1789, they informed him, that Oldfield was to sail in a few days from Ostend, with a quantity of gin and brandy; that he meant first to call at Boarhills, when he expected Philp would be prepared for him, and assist him in the disposal of the cargo.

The letter was so expressed as to leave room for arguing, that the goods were the property of the captain.

Oldfield accordingly arrived at Boarhills soon after. Philp agreed to take a considerable quantity of the cargo, and accepted bills for the price, payable to Thomas Potts, nephew to Thomas Cullen, who acted as supercargo on this occasion. The greater part of the goods were seized in the landing.

The bills were indorsed to Sir William Forbes and Company, for behoof of Cullen and Company, to whose account they were immediately placed; and