

1781. *January 19.* Captain CHARLES NAPIER *against* ROBERT and JOHN BROWNING.

IMPRESS SERVICE.

The Exemption from being impressed, which is competent to the Masters and Mates of Trading Vessels of fifty tons and upwards, does not extend to persons of that rank when employed in smuggling.

[*Fac. Coll. VIII. 32; Dict. 6610.*]

BRAXFIELD. That the suspenders were smugglers, seized in the act of smuggling, is now proved by a decree in Exchequer importing what is equivalent to a condemnation. Masters and mates are not liable to be impressed; but here the master and mate plead that they are such on a smuggling voyage. This defence cannot be received, being an acknowledgment of turpitude. The captain of a smuggling vessel cannot plead legal privileges; just as in smuggling contracts we deny action, because the smuggler cannot plead on his own turpitude.

PRESIDENT. Pressing is a necessary legal evil. Masters and mates are exempted, not by any statute, but merely for the benefit of commerce; and accordingly, in practice, and by the orders of the Admiralty, they have been exempted: but still masters and mates must plead on the foundation of that exemption, which smugglers cannot do.

JUSTICE-CLERK. The vessel was taken in the act of aggravated smuggling. While possessed of a letter of marque to wage war against the enemies of the state, the crew waged war against the King's officers and the fair trader.

On the 19th January 1781, "The Lords found the letters orderly proceeded."

Act. Ilay Campbell. *Alt.* A. Elphinstone.
Reporter, Kennet.

1781. *January 31.* Sir JAMES COLQUHOUN *against* WILLIAM, DUKE of MONTROSE, and OTHERS.

SUPERIOR AND VASSAL.

Division of superiority null, when made without consent of the vassal.

[*Fac. Coll. VIII. 46; Dict. 8822.*]

MONBODDO. The case of *Sir John Maxwell*, 1742, related to a fiar; but that makes no difference, for a liferenter is proprietor to a certain extent. The