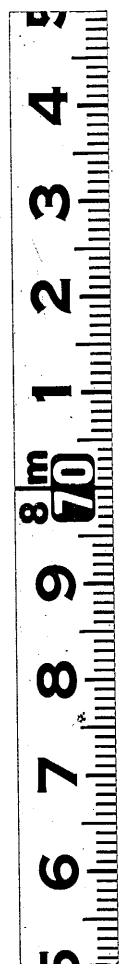


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C A S E S

Relating to the

D U T I E S

O F

E X C I S E,

And to the Jurisdiction of

Justices of the Peace,

Upon INFORMATIONS laid before them for Offences against the L A W S of

E X C I S E:

And to the Jurisdiction of the Justices at the Quarter-Sessions, relating to APPEALS in Cases of the Duty upon M A L T.

LONDON: Printed in the Year, 1715.

A CASE and QUERI, how far Persons who brew only for Exportation, and are not otherwise Common Brewers, are liable to pay the Duties of EXCISE.

BY Two Acts of Parliament, viz. 12 Car. 2. Cap. 23. and Cap. 24. it is enacted, That for every Barrel of Beer or Ale, above 6 s. the Barrel, brewed by the Common Brewer, or any other Person or Persons, who doth or shall sell or tap out Beer or Ale publickly or privately, to be paid by the Common Brewer, or by such other Person or Persons respectively, and so proportionably, 2 s. 6 d. By the Act of 1 W. & M. Cap. 22. Any Person may export, as Merchandize, for account of himself or any other Person, any Strong Beer, Ale, Cyder, Mum, to be spent beyond the Seas: And the Commissioners of Excise and Officers, are to allow or repay the Excise thereof to the Brewer or Maker.

The CASE

A Merchant brews Strong Beer to be exported and sold as Merchandize, and exports the same.

Whether such Person be not a Seller of Beer or Ale within the Meaning of the Act of 12 Car. 2.

Queri.

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and liable to make Entry and Payment of all the Drink he brews, drawing back the Duty for that Drink only that he exports, by vertue of the Act of 1 W. & M.

I conceive he is liable to pay Excise for all the Strong Beer he brews; especially if he frequently and usually brew for Exportation; and shall draw back the Duty for so much of it as he exports: For he is a Person that sells Beer, and therefore liable to pay in like manner as a Common Brewer, not only by the Words of 12 Car. 2. but by reason (his Intent and Purpose in brewing, being for Profit to be acquired from Buyers, and not for spending or consuming in his Household) he puts himself into the same State and Condition as the Common Brewer; does the same Work, for the same Use, and to the same End. And the Act of 1 W. & M. requiring the Officers of Excise to make Allowance, or repay the Excise, for so much of such Beer as is actually exported, unto the Brewer or Maker, implies that such Maker was liable to pay Excise for all that he brewed, (as well as a Common Brewer.)

April 23. 1692.

Geo. Treby.

A CASE

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A CASE and QUÆRIES, how far the making of Low-Wines, and from thence Strong-Waters or Spirits; and the exporting such Strong-Waters, &c. as Merchandise, subjects such Makers to the Duties, and obliges them to make Entries.

BY Two Acts made 12 Car. 2. it is enacted, That for every Gallon of Strong-Water or Aquavite made and sold, there shall be paid by the Maker, 2 d. viz. by each Act 1 d.

And that all In-keepers, Alehouse-keepers, Victuallers, and other Retailers of Beer, Ale, Cyder, Perry, Metheglin or Strong-Waters, brewing, making or retailing the same, shall once in every Month make true and particular Entries at the Excise Office, within the Limits of which the said Commodities and Manufactures are made, of all Beer, Ale, Cyder, Metheglin, Strong-Waters, or other the Liquors aforesaid, which they or any of them shall brew, make or retail in that Month.

1 Jac. 2. An additional Duty was granted in these Words, viz. For every Gallon of Strong-Waters, Aquavite, or Spirits of the second Extraction, made here for sale, to be paid by the Maker, 4 d. over and above the Duties of Excise already payable for the same. This Act expired in the Year 1690.

2 W. & M. It is enacted, That from the 24th of December, 1690, until the 25th of December, 1695,

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1695, there shall be paid, for all Low-Wines or Spirits of the first Extraction, drawn by Distillers, or other Makers of Spirits and Strong-Waters for sale, within the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, the Rates and Duties following, viz.

For every Gallon of Low-Wines of the first Extraction from foreign Materials, or mix'd with foreign Materials, 8 d.

For every Gallon of Low-Wines drawn only from Drink brewed from malted Corn, 1 d.

For every Gallon of Low-Wines drawn from Cyder or Perry, or any mixture therewith, 3 d.

3 W. & M. It is enacted, That if any Common Distiller, or Maker of Low-Wines, Spirits or Strong-Waters, shall at any time hereafter hide, conceal or convey, any Low-Wines, Spirits, or Strong-Waters for sale, from the Sight or View of the Gauger, or Gaugers, appointed to take an account of the same, whereby their Majesties shall or may be defrauded of any of the Duties due for the same. That every such Common Distiller, or Maker of such Low-Wines, Spirits or Strong-Waters for sale, so hid, concealed, or conveyed, as aforesaid, shall forfeit the Sum of 5 s. each Gallon.

The CASE.

A. B. a Merchant, draws great Quantities of Low-Wines, or Spirits, of the first Extraction, and from thence makes or distills Strong-Water or Aquavitæ, and exports the same as Merchandize, but sells none in England.

Queri. Whether such Merchant, drawing Low-Wines of the first Extraction, and from thence distilling,
or

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or making the same into Strong-Water or Aquavitæ, and exporting the same as Merchandise, tho' he sells no Strong-Waters, Aquavitæ, or Low-Wines in England, shall be charged with the Duties by the said Acts, made 12 Car. 2. and shall make Entry and Payment as those Acts direct?

I am of Opinion that he must pay the Duties imposed by 12 Car. 2. upon Strong-Waters; and must make Entries according as the Acts direct. For exporting Strong-Waters as Merchandise I think will be sufficient Evidence of selling them.

Whether such Merchant shall be charged with Queri. the Duty on Low-Wines of the first Extraction, from which he distills or makes the Strong-Water or Aquavitæ he exports, by the said Act made in the 2^d Year of W. & M. and shall make Entry and Payment thereof, as above?

I think he is liable to pay the Duties laid by 2 W. & M. upon Low-Wines of the first Extraction, made for sale. For I think drawing from them Strong-Waters, &c. and then exporting the Strong-Waters as Merchandise, is sufficient Proof they were made for sale.

Aug. 6. 1695.

Tho. Trevor.

A CASE

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A CASE stated on several Acts of Parliament, relating to the Jurisdiction which Justices of the Peace, by virtue of those Acts, have of and concerning Forfeitures incurred by committing Offences against those Acts, with QUÆRIES thereupon, and the Opinions of Sir Edw. Northey, Knight, Her Majesty's Attorney General, and Sir Robert Raymond, Knight, Her Majesty's Solicitor General, in Answer to those QUÆRIES.

BY 12 Car. 2. Cap. 23. Sect. 31. Excise Book, fo. 17, 18. It is enacted, *That all Forfeitures and Offences against the Laws of Excise happening within the Limits of the Chief Office shall be heard by the Commissioners.*

And all Forfeitures and Offences within any other County, City, Town or Place, &c. shall be heard and determined by any two or more Justices of the Peace, residing near to the Place where such Offence shall be committed.

And in the Stat. 12 Car. 2. Cap. 24. Sect. 44. Excise Book, fo. 42, 43. The same Clause is again enacted in the very same Words.

The Stat. 15 Car. 2. Cap. 11. Sect. 8. Excise Book, fo. 61. enacts, *That no Common Brewer or Inn-keeper shall have Power to act in, or execute as a Justice,*
any

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any of the Powers in any of the Laws of Excise.

And Sect. 22. Excise Book, fo. 76. *That all Differences, Appeals and Complaints that shall happen and arise between Party and Party, in order to the Payment of the Duty of Excise, shall be heard and determined in the proper County, or in the several Ridings and Divisions of Yorkshire and Lincolnshire, where they shall arise, and not elsewhere.*

And Sect. 44. Excise Book, fo. 77. *That the Justices of the Peace, or any two or more of them, or Chief Magistrates in the several Counties, Cities, Divisions, and Places within England and Wales respectively, shall meet once in every Month in their respective Divisions, or oftner if there shall be Occasion, to hear, determine, and adjudge all Matters against this or the aforesaid Acts.*

The said two first Acts do not say, *That these Forfeitures, &c. in other Counties, Cities, Towns or Places, shall be heard by any two or more Justices of such County, City, Town or Place respectively, where such Forfeiture or Offence shall be committed; But by any two or more Justices residing near to the Place where such Offence shall be committed.*

And the said Act 15 Car. 2. after it has disabled Brewers or Inn-keepers from acting as Justices in Matters relating to the Excise, does enact, *That these Matters shall be heard in the proper County, or in the Ridings and Divisions of Yorkshire and Lincolnshire, where they shall arise, and not elsewhere.*

Justices of the Peace, as to Rates for the Poor, and as to High-Ways, and other Parochial Affairs, generally choose to act only in the respective Hundreds wherein they dwell; and having on those Occasions used to call each Hundred a Division, some from

from thence, and from the before-mentioned Clause, appointing these Matters to be heard in the respective Ridings and Divisions of *Yorkshire* and *Lincolnshire*, and from the Clause directing the Justices to meet once in every Month in their respective Divisions, have asserted, That the Justices of one Hundred have not Jurisdiction to hear Matters of Excise arising in another Hundred.

The Magistrates of several Corporations are by their Charters appointed Justices of the Peace within the Limits of their respective Corporations, and by virtue thereof do hold Quarter-Sessions, separate and distinct from the Quarter-Sessions of and for the respective Counties in which they are situate. And in some of their Charters there are express Clauses excluding the County-Justices from acting in Matters (arising and happening within those Corporations,) which at the time of such Charters did belong to Justices of the Peace.

Notwithstanding such Charters, the County-Justices being Justices all over their respective Counties, and these Corporations continuing to be within and part of those Counties, they (the County-Justices) do frequently meet at and in these Corporations, and do there hear and determine Matters of the Peace, &c. arising and happening in other Parts of those Counties, out of the Limits of such Corporations.

All such Charters as before are mentioned, which have hitherto appeared, are dated before the making the said Acts of Excise.

If the Justices and Magistrates of such Corporations happen to be Common Brewers or Innkeepers, they then, by the before-mentioned Clause, are disabled from acting as Justices in Matters of Excise, so that it may and often does
happen

happen, that there are not in some Corporations two Justices qualified to act in Matters of Excise; and in many Corporations the Justices are but mean Persons.

If Hearings in Excise-Matters are appointed at I. *Queri* or near the Place where the Offences are committed, or but at a convenient Distance from thence, Is it of any moment of what Hundred the Justices are, who are to hear and determine?

May Offences against the Laws of Excise, committed in such Corporations, be heard and determined indifferently, *viz.* Either by the Justices of the County in which such Corporations are, Or by the Justices of such Corporations, according as the Informations shall happen to be laid: Or is the Jurisdiction in such Cases restrain'd to the Justices of such Corporations only? II. *Quer*

If any such Charter as before is stated, should III. *Quer* happen to be dated since making the said Excise-Acts, Will such Charter so dated exclude the Justices of the County, in which such Corporation is, from having Jurisdiction in Matters of Excise, arising within such Corporations?

Mr. At-

Mr. Attorney General his Opinion on the said CASE, and his Answer to the said QUÆRIES.

the I. I am of Opinion there is not any Law that restrains the Determination of Excise-Causes to the Justices of the Peace of the Hundred within which the Offences are committed.

the II. I am of Opinion, by the Laws of Excise, the Justices of the Peace of the Counties have Jurisdiction of Excise-Causes arising any where within the County, and may hear and determine such Causes, altho' arising within Corporations wherein there are Justices of the Peace, and where the Charters are with exclusive Words of the Justices of the Peace of the County.

the III. I am of Opinion such new Charters will not exclude the Authority of the Justices of the Peace of the County, their Authority being given them by the Laws and Acts of Parliament relating to the Excise.

May 22. 1714.

Edw. Northey.

Mr. So-

Mr. Solicitor General his Opinion on the said CASE, and his Answers to the said QUÆRIES.

To the I. The Justices of Peace of any County, by their Commission, have Jurisdiction through the whole County, and the Divisions they make among themselves as to acting in particular Hundreds or Parts, are only for their Convenience, but don't abridge their Jurisdiction. And therefore I am of Opinion 'tis not of any moment of what Hundred the Justices that act live in, but that they have Power to hear and determine Offences against the Laws of Excise in any other Hundred in the same County; and nothing to the contrary can be infer'd from the Stat. 15 Car. 2. Cap. 22. *Excise Book, fo. 76.* which says, *The Justices shall hear and determine in the proper County, and in the several Ridings and Divisions of Yorkshire and Lincolnshire.* For Ridings and Divisions are inserted in those two great Counties, because the Commissions of the Peace are several in the Ridings in *Yorkshire* and also in *Lincolnshire*, in respect of *Holland, &c.* and the County at large.

To the II. I am of Opinion, That by vertue of the Acts concerning the Duties of Excise, the Justices of the Peace of the County at large have Jurisdiction in Causes relating to the Duty of Excise in Corporations, where there are Justices of the Peace appointed by Charter; and that they may proceed upon the Laws of Excise,

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cise, to hear and determine Offences there, as well as the particular Justices of the Peace of such Corporations; and that Words in such Charters exclusive of the Justices of the Peace of the County cannot exclude them from determining Matters arising in the Corporation relating to the Duty of Excise.

to the III.

I am of Opinion such new Charters cannot restrain the Justices of the Peace of the County from acting in Corporations in Excise-Causes, to do which they are impowered by Acts of Parliament, as I said before.

July 7. 1714.

Rob. Raymond.

A CASE stated upon a Clause in the Malt-Act, made in the Twelfth Year of the Reign of Her Majesty Queen ANNE.

THE Duty upon Malt, by the before-mentioned Act, and by all the former Malt-Acts, is 6d. per Bushel; for the charging and collecting whereof, the Officers are impowered from time to time, as often as they can, to take Accounts of all Corn wetting or steeping, or which has been wetted or steeped, in order to the making Malt; and to make Returns of the full and true Quantities of such Corn, as they from time to time find so wetting or wetted, or making into Malt. Which Returns are to be Charges upon the Malsters. Act 12 Anne fo. 65.

But

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But if Malsters were in all Cases to pay according to the full Quantities so returned, they would then often pay more than 6d. per Bushel; because Corn, when wetting or steeping, or after it has been wetted, (if not prevented by some Art or Management) will swell and rise to a greater Extent and Bulk, than it will be after it is compleatly made into Malt, and has been dryed on the Kiln. In consideration of which Swelling and Rising, and of the difference in the Bulk and Extent of the Corn whilst it is risen and swoln, and when it has been dryed on the Kiln; And that the Duty might not exceed 6d. per Bushel, the Parliament thought fit to make the following Allowances, viz.

If the Charge be made by the Officer whilst the Corn is in the Cistern, &c. or within thirty Hours after first taken out thence, the Malster out of such Charge is to have an Allowance of four Bushels out of every twenty Bushels, and so proportionably, viz. One fifth part. Act 12 Annæ fo. 70.

And if the Officer's Charge is made after the Corn has been above thirty Hours out of the Cistern, then out of such Charge the Malster is to have an Allowance of ten Bushels out of every twenty Bushels, and so proportionably, viz. One half. Act 12 Annæ fo. 73.

Which Allowances are constantly made to the Malsters, and are enough to answer the rising and swelling of any Corn. For tho' good and heavy Corn will rise and swell more than bad and light Corn, yet these Allowances are sufficient to answer the rising and swelling of the best Corn, but are more than sufficient to answer the swelling of bad Corn; so that unless an Officer in gauging the Corn

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mistakes the true Quantity thereof, a Malster cannot be over-charged.

The rising and swelling of Corn, whilst wetting or after wetted, was the Ground and Inducement to the Parliament, to direct the making these Allowances, which were granted upon a Dependence and Expectation, that Malsters would continue to lay and make their Malt, as before the laying on of this Duty they used to do. And it was not then foreseen or suspected, that Malsters would, by any unusual Methods, force their Corn when making into Malt, to lie closer than it used to do. But whereas before the granting this Duty, and for some-time after, an Officer could easily thrust any ordinary Gauging Rod to the bottom of a Cistern or Couch of Corn, some-time after the laying on of this Duty, the Officers found the Corn in some Cisterns and Couches so hard (by having been forced together) that they were obliged to provide Iron Rods, and to use Strength, to force them to the bottom of Cisterns and Couches of Corn: Upon Complaints whereof the Officers were directed, when they found Corn so forced together, to measure it by the Bushel, which they accordingly did, and always found that the Quantity by Measure, far exceeded the Quantity which by a regular Computation from the Gauge thereof could fairly be charged.

But it being represented to the Parliament, that this measuring by the Bushel sometimes did Damage to the Corn, this Power of measuring by the Bushel was taken away by the Malt Act of 9 Anne. And in that Malt Act there was the like Clause, against forcing Corn together, as is in the said Act of 12 Anne which Clause in 12 Anne Fol. 70. is in the Words following, viz.

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And whereas in making of Malt, practiced before the granting the said Duties, the Barly, or other Corn or Grain, during its steeping in the Cistern or Utting Fat, did usually rise and swell so considerably, that it was thought reasonable, upon granting the said Duties, in all Charges to be made by the Officers from the Cistern or Couch, to allow to the Malsters, upon payment of the Duty, four Bushels in every twenty Bushels, and so proportionably, upon every greater or lesser Quantity, in Consideration of such rise or swelling of the Corn; which Allowances have been, and are made accordingly. And whereas many Malsters or Makers of Malt for Sale, by pressing, treading, ramming, or other Methods, do now not only make their Corn lie so close in the Cistern or Utting Fat, and also in the Couch, that the rise or swelling as aforesaid is prevented, but also renders it very difficult for Officers to know the true Quantity of the Corn steeped or in the Couch, and thereby have the Allowances aforesaid, though the reason of making the same is taken away. Be it therefore further Enacted, That if any Malster or Maker of Malt for Sale, during the Continuance of the Duties on Malt by this Act granted, shall tread, ramm, or otherwise force together in the Cistern, Utting Fat or Couch, any Corn steeping or steeped, in order to the making into Malt; every such Malster or Maker of Malt for Sale, shall for every such Offence forfeit and lose the Sum of two Shillings and six Pence for every Bushel of Corn steeping or steeped, that shall be so pressed, trodden, rammed or forced; any thing herein, or in any former Act or Acts contained to the contrary in any wise notwithstanding.

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The Malt-Act for the now current Year is with a Reference to the foregoing Clause, and all other Clauses in the said Act of the 12th of Her said Majesty.

Notwithstanding which Clause, and the like Clause in 9 *Annae*, several Malsters and their Servants (especially in some particular Counties and Places) persisting in forcing the Corn together, as they had done before the making the said Clauses, the Officers often found the Corn as well in Cisterns as in Couches forced together, and made to be so compact and close as did sufficiently demonstrate that some Means or other had been used to make it lie so close. And at other times the Officers have accidentally seen the Malsters Servants actually treading and forcing the Corn together, and upon such Discoveries, Informations for the Penalty in the foregoing Clause have been laid before Justices of the Peace for the respective Counties where such Discoveries have been made, (they being by the Malt-Acts empowered to hear and determine these Offences.)

And upon hearing some of these Informations, it has been strongly insisted by the Malsters and their Advocates, That this being a penal Law, none ought to be convicted thereon without the most plain and positive Proof, and that the finding Corn so close and hard as before described was not a plain and positive Proof, but was only circumstantial Proof of the Fact; unless the Witnesses could give Evidence by what particular Means or Method the Corn had been so forced together, or had been actually present whilst the Malster or his Servant was forcing it together.

Nay.

Nay, when upon hearing other like Informations the Witnesses have given Evidence that they actually see the Malsters Servants tread or ramm the Corn together; it has in such Cases been insisted on the part of the Malsters, that (on a penal Law) they ought not to be punished for Acts done by their Servants.

These and other such like Objections having been made by Gentlemen of the Law, Justices of the Peace in several Places, for fear of doing Wrong, have been dissuaded from putting this Act in Execution, and have been induced to acquit several Malsters who most certainly have been guilty within the true Intent and Meaning of this Law, which by these Means have been rendered ineffectual, and the Crown has been defeated of great part of this Revenue to the great Prejudice of the Publick, and to the Discouragement of such other Malsters, who, not using these indirect Practices, do actually pay (in Proportion to the Malt they make) more Duty than such as so force their Corn together, contrary to the said Clause, and by these Means this becomes an unequal Tax upon the Malsters.

If positive and full Proof be made of Corn lying closer than it could or would do, unless some Means or other had been used to make it lie so close, Ought such Evidence to be deemed full and positive Proof of the Offence meant and intended in and by this Statute, tho' no Evidence be given of the particular Occasion of such Closeness, viz. Whether it came by pressing, treading, ramming, or by what other particular Means? And shall the Acts of the Servants, in such Cases, be deemed the Acts of their Masters?

Queri.

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I am of Opinion the finding the Malt so close, that it could not be so without pressing or ramming, &c. is a sufficient Evidence to prove the Information, and it is all the Evidence that can be expected, and all that the Law requires. For the Officer gives an Account of the Condition he finds the Corn in when he comes to take his Gauge, and it must lie on the Malster to shew how it came to lie so close; and if he does not, it is an Evidence it was made so by him or his Servants, whose Acts in this Case are his Acts.

May 22. 1714.

Edw. Northey.

The Malsters having always had, and yet enjoying the Benefit of the before-mentioned Allowances, they ought not only to forbear all indirect Means of preventing the rising and swelling of their Corn, but (to entitle themselves to these Allowances) they ought in Justice so to lay their Corn, that it might have its full scope to rise and swell as it used to do before the laying on of these Duties; such rising and swelling being the Consideration and Reason of granting these Allowances. But it being entirely at the Will and Pleasure of Malsters to put their Corn into their Cisterns, &c. and to take it out, and lay it in Couches, when and at what Times they think fit, they take Care to do these things in the Absence of the Officers, that they may have no Opportunity to see or know how or by what Means the Corn is made to lie so close, so that if an Information be laid for ramming

ming Corn together, it may upon the hearing such Information appear, That the Closeness of such Corn was occasioned by treading, and so *vice versa*. But it appearing by the Preamble to this Clause, that the preventing the rising and swelling of the Corn by any Method is the Crime intended to be punished by this Clause, and the Words *or otherwise force together* being part of this Clause.

May not an Information be laid for forcing Corn together, without setting forth the particular manner of forcing it together, either by pressing, treading or ramming? And will such Closeness of the Corn be sufficient Evidence to maintain such Information?

Queri.

I am of Opinion, if it be apparent that the Corn by Art and Management is made to lie so close that the rise or swelling is prevented, it is an Evidence that the same was forced together; and an Information may be laid for forcing the Corn together, without mentioning how it was forced together. The Words *or otherwise force together* allowing such general Charge, which will be explained by the Evidence; and its lying closer together than ordinarily, is an Evidence of indirect Means used to force it, which will be sufficient to convict the Defendant on the Clause stated.

October 25. 1714.

Edw. Northey.

(22)

A CASE stated on a Clause in the Malt-Act, made in the First Year of Her Majesty Queen ANNE, whereby either Party has Liberty to appeal to the Justices at the Quarter-Sessions, from Judgments given by private Justices on Informations for Offences against the said Malt-Act, with the Opinions of Sir Edward Northey, Knight, Her said Majesty's Attorney General, and Sir Robert Raymond, Knight, Her said Majesty's Solicitor General.

IT being enacted by the said Malt-Act, That such Malsters and Makers of Malt as in their Trade do contrary to several Clauses in the said Act, shall be subject and liable to several and respective Fines, Penalties and Forfeitures particularly mentioned in the said Act. It is thereby further enacted, That all Penalties and Forfeitures imposed by the said Malt-Act shall be sued for, levied, recovered, or mitigated by such Ways, Means, and Methods, as any Fine, Penalty, or Forfeiture may be recovered or mitigated by any Law or Laws of Excise.

By the Act for the hereditary Excise, viz. 12 Car. 2. Cap. 24. Sect. 44. Excise Book fo. 42, 43. It is enacted, That all Forfeitures and Offences a-
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gainst the said Act, happening within the Limits of the chief Office in London, shall be heard and determined by the chief Commissioners, &c. And that all Forfeitures and Offences committed in any other Counties, Cities, Towns or Places, shall be heard and determined by any two or more Justices of the Peace, residing near to the Place where such Forfeiture shall be made, or Offence committed.

Neither the said Act of 12 Car. 2. nor any other Act relating to the Excise on Beer, Ale or other Liquors, gives any Appeal to the Quarter Sessions, from the Judgment of two or more Justices, in Matters relating to the Excise on Beer, Ale or other Liquors. But by the said Malt Act of 1 Anne, it is enacted, That if either Party think him or themselves aggrieved, by any Judgment or Order to be given or made, &c. by any Justices of the Peace, &c. in pursuance of that particular Act, (viz. the said Malt-Act) it shall and may be lawful, to and for such Person, &c. to appeal from the same to the Justices assembled at the next Quarter Sessions of the Peace, to be holden for the County where such Judgment or Order has been made; which said Justices of the Peace, or the major part of them, are thereby empowered to hear, and finally to determine the same. And no Writ of Certiorari shall be allowed or brought to set aside any Determination or Order of the said Justices.

Pursuant to this Clause several Persons, convicted by Justices of the Peace of having committed Offences against the said Malt-Act, have appealed to the Quarter-Sessions, where the usual Method has been to hear the Cause over again, and to examine all the Witnesses, and then to reverse or affirm the Judgment, according to the Evidence and Merits of each Cause. But in some particular

lar Instances, where, upon Appeals at the Quarter-Sessions, Exceptions have been taken to the Forms of the first Judgments given by Justices of the Peace, and the Justices at the Quarter-Sessions have been of Opinion that such first Judgments were insufficient and defective in Form, they at the Quarter-Sessions have for such Defects of Form quash'd or reversed such first Judgments, and have not thought fit to hear or examine the Merits or Truth of the Facts alledged against such Defendants, apprehending that they having so quashed such first Judgments it was not necessary for them to do any thing more, and that the before-mentioned Clause did not require them in such Cases to enter into the Examination of the Merits of such Causes. Whereas the foregoing Clause empowering the Justices at their Quarter-Sessions to bear and finally to determine, seems to intend an Examination of the Fact, rather than a critical scanning the Form of the Proceedings, and that the Cause should be there finally determined rather than that the Prosecutor should be put to lay a new Information, which in many Cases could not be done; because by other Acts relating to the Excise, no Information may be laid before Justices of the Peace, unless the same be laid within three Months next after the time when the Offence was committed, which in many Cases will be elapsed before such reversal at the Quarter-Sessions.

It farther seems as if the Makers of this Act foresaw that the Forms of Judgments by private Justices in these Causes might not be correct enough to bear the nice Examinations of the Queen's Bench, and for that Reason have expressly provided, That in these Cases no *Certiorari* shall be allowed or brought, but if the Sessions are in these Cases to judge

judge by the same Rules of Nicety as the Queen's Bench, then that *proviso* seems vain.

Suppose therefore, that upon an Appeal to the Quarter-Sessions, from a Judgment or a Conviction by two Justices for an Offence against the Malt-Act, such Error or Errors should be found in such Judgment as in the Courts of *Westminster* would be sufficient to quash such Judgment.

Are the Sessions to judge thereof according to I. *Queri.* the Niceties observed in the Queen's Bench or *Certiorari's*, &c?

And if they are, then Are they in such Case barely to quash or reverse II. *Queri.*

such Judgment or Conviction, and thereby put the Prosecutor to begin all *de novo*, and run the hazard of having a second Judgment quash'd for some other like Mistake in Form, and so *toties quoties*?

Or are they, after such reversing such Judgment, to hear the Cause, and examine the Evidence; and upon the Justice and Merits thereof, either finally to acquit the Defendant, or to give such Judgment as is agreeable to Law, and as should have been given at first?

Mr. At-

Mr. Attorney General his Opinion on the said CASE, and his Answers to the said two QUÆRIES.

To the I. I am of Opinion, the Justices of the Peace at their Quarter Sessions, are not to proceed on such Niceties, as have sometimes prevail'd in the Courts of *Westminster-Hall*, but only on such Defects which are Substance, and hinder the Matter intended to come before them to be so, or where the Judgment is contrary to Law; in which case the Justices may set aside a Judgment, but not stop there.

To the II. I am of Opinion on an Appeal, the whole Matter is before the Justices, as it was originally before the two Justices. And they are to examine, as well the Fact charged in the Information, as the Proceedings of the two Justices thereon; and if the Judgment be erroneous, (the Information being good) the Sessions are to proceed on the Information, and examine the Fact, as if they had had an original Jurisdiction; the whole Jurisdiction by the Appeal being transferred to them.

Mar. 5. 1712.

Edw. Northey,

Mr. So-

Mr. Solicitor General his Opinion on the said CASE, and his Answers to the said QUÆRIES.

In Cases of Judgments and Orders, &c. removed into the *Queen's Bench* on *Certiorari's*, the Court there can't examine into the matter of Fact, but only proceed on the Order, &c. returned on the *Certiorari*. But on Appeals from Orders, &c. made in Excise Causes, the Justices at the Quarter Sessions, may re-examine the very Fact, and give Judgment on the Merits. And therefore I am of Opinion, they are not obliged to regard such Niceties as the Court of *Queen's Bench* have sometimes allowed, but only such Defects as are substantial.

If the Information is good, and the Justices should reverse the Judgment for matter of Form, I am of Opinion the Justices ought to proceed upon the Information, and examine the Witnesses and determine the Fact; and thereupon give such Judgment as to them shall seem just.

March 5. 1712.

Rob. Raymond.

F I N I S.

(2)

The following is a copy of the
report of the Commission on the
Administration of the
Federal Government.

In the course of its investigation, the
Commission has held numerous public
hearings and has received many
suggestions from interested persons.
It has also conducted extensive
research into the various problems
connected with the administration
of the Federal Government. The
Commission believes that the
present system is in need of
fundamental reform. It is
of the opinion that the
present system is not only
inefficient but also costly.
It is therefore recommended
that the following reforms be
adopted:

1. The number of members of the
Executive Council should be
reduced to five. The
present number of seven is
unnecessarily large and
expensive. The five members
should be elected for a term
of five years.

2. The Executive Council should
be empowered to appoint and
dismiss Ministers of State.

3. The Executive Council should
be empowered to appoint and
dismiss the Chief Justice of
the Federal Court.

4. The Executive Council should
be empowered to appoint and
dismiss the members of the
Judicial Commission.

5. The Executive Council should
be empowered to appoint and
dismiss the members of the
Public Service Commission.

6. The Executive Council should
be empowered to appoint and
dismiss the members of the
Audit Commission.