

No 92.

By these and other clauses of the mutiny acts, a much greater power is given to courts-martial, in matters respecting the pay of officers, than what was here assumed. And, in practice, matters of this kind have usually been adjusted in that manner.

Answered, The powers of courts-martial, unknown to the common law, and introduced by the mutiny acts, for the preservation of military discipline, can never be carried farther than those acts have gone. But there is no clause in any of them, which bestows a jurisdiction in matters of property or civil right. Courts-martial are, indeed, empowered to inflict a very severe penalty on a paymaster guilty of with-holding the pay of officers or soldiers; yet, even from that clause, it is clear, that, though the court-martial can punish, it has no power to determine any claim of retention, as was attempted in this case; and that all such matters must be left to the courts of law.

But, allowing such a jurisdiction to be competent to courts-martial, their proceedings are subject to the review of the Court of Session. Military persons are amenable to the ordinary courts of law; so that, at common law, the proceedings of courts-martial might have been judged of by every inferior court; but, by a clause in the mutiny acts, all actions, for any thing done in consequence thereof, or in respect of any sentence of a court-martial, are limited to the courts of record at Westminster, or Dublin, and the Court of Session in Scotland.

Having thus established the jurisdiction, the pursuer pointed out sundry irregularities in the procedure, which it is unnecessary to mention here; and even produced a letter from Captain Gordon, denying that he had ever directed the complaint, or applied for a court-martial.

Hence the judgment of the Court can hardly be considered as determining whether courts-martial have any jurisdiction, such as was exercised in this case; but it fixes the point, that their sentences may be reviewed.

“THE LORDS repelled the defence, and found the defender liable in expenses.”

Act. *Crosbie.*Alt. *Rac.*

G. F.

Fac. Col. No 46. p. 274.

1770. November 17.

JOURNEYMEN TAYLORS in Edinburgh, Pursuers, *against* The INCORPORATION OF TAYLORS in Edinburgh, Defenders.

No 93.

Action for regulating the hours of working, &c. incompetent before the Court of Session *prima instantia.*

IN the year 1769, certain journeymen taylor brought a process of declarator before the Court of Session, concluding to have it found and declared, *imo*, That the hours of work that are daily exacted of them and the other journeymen taylor are rigorous and oppressive; which, therefore, should be shortened; and that the Court should ascertain how many hours a-day they

should be obliged to work, and what intervals of respite they should be allowed; *2do*, That the shops of the masters being too small, they should be obliged to enlarge them, &c.

In defence to this action, the master taylor stated, *1mo*, That the pursuers had no title to carry on the action; *2do*, That it was not competent before this Court in the first instance; *3tio*, That it was barred by a former judgment.

THE LORD ORDINARY, at the first hearing of the cause, adverted in particular to the two first of their defences, and pronounced this interlocutor: "Sustains the defence offered on the part of the defenders; and, in respect thereof, dismisses the process as incompetent." But having afterwards taken the cause to report upon informations, in support of the title and competency of the action;

The pursuers *pleaded*,

It was the established law, and agreeable to the practice, that journeymen taylor, under no contract with any master, were compellable to work upon their being required, and were punishable by imprisonment in case they refused. Upon the supposition, therefore, that this was the law, any one journeyman had a title to have the terms upon which he was compellable to work ascertained *secundum bonum et æquum*, as he might otherwise be subjected to distress, and deprived of his personal liberty for refusing to work upon terms unreasonable and oppressive.

As to the competency, though the magistrates of Edinburgh had a cumulative jurisdiction, yet they had no privative jurisdiction in cases of this nature; and as the present was not a question of police but of right, the jurisdiction of the Court of Session could not be taken away but by express statute.

The defenders *pleaded*,

If actions, such as the present, at the instance of individual journeymen were sustained, there would be no end to the abuse; for, upon the supposition that the journeymen should obtain a judgment upon any one of the particulars complained of, that would bind the masters as a body corporate; but if the contrary should follow, any decision obtained would be effectual only against the individuals concerned; so that the masters would have the same battle to fight over again with every single journeyman, and that too upon every trifling article of complaint that might capriciously be brought.

As to the competency, if there was any grievance or ground of complaint, the magistracy of Edinburgh was the proper jurisdiction to apply to for redress. The statute law gave to Justices of Peace and other magistrates the power of regulating workmen's wages within burgh; the magistrates of Edinburgh had immemorially exercised that power; and though their regulations and judgment in matters of this nature might be reversed by suspension of

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otherwise, yet they could not be brought under the cognizance of the supreme Court in the first instance.

The majority of the Judges were of opinion, that this being a matter of police, the action was incompetent. They were, however, clear, that the journeymen should be allowed the hours they asked; the statute 8th Geo. I. c. 17., gave that indulgence to the journeymen taylors in London and Westminster, and regulated their hours of working to be from six in the morning to seven at night, with the interval of one hour for dinner; and they thought that the rule here should be the same.

17th November 1770. An interlocutor was accordingly pronounced, "Superseding farther procedure in the cause till the first Tuesday in February next, without prejudice to the pursuers, in the mean time, to apply to the magistrates of Edinburgh for redress of the several articles complained of in their summons."

The journeymen made an application accordingly; and the masters having consented, the magistrates made an act, appointing the hours of work to be the same as in England, viz. from six in the morning to seven at night, with the interval of an hour for dinner.

Lord Ordinary, *Monbuddo*. For the Journeymen, *Maclaurin*. For the Masters, *Lockhart*, *Rae*.
Clerk, *Ross*.

R. H.

Fac. Coll. No. 46. p. 133.

1771. March 5.

DAVID GILCHRIST, JOHN AITKEN, ROBERT BAXTER, and Others, Burgesses and Inhabitants of Kinghorn, Pursuers, *against* The PROVOST, MAGISTRATES, and TOWN COUNCIL of Kinghorn, Defenders.

No 94.
Action for a general accounting, and for a general inspection of the accounts of the common good and revenue of a borough, at the instance of private burgeses, incompetent before the Court of Session.

The pursuers, in the year 1769, brought an action against the defenders in the Court of Session, containing a variety of conclusions relative to the management of the affairs of the borough. Those particularly deserving of consideration were as follows: *First*, "That it should be found and declared, that Robert Hamilton (the present Provost) is not eligible Provost at Michaelmas next; and that no person shall be capable of holding the said office for above two years at once in all time coming." The next was, "That Provost Hamilton should be ordained to exhibit an account of the fund, called the sinking fund, and to make payment to the said treasurer of the borough, for behoof foresaid, of the whole sums arising from that fund, with interest thereof periodically from the respective periods at which the same came into his hands. *Lastly*, That the said defenders, and their successors in office, are bound and obliged, for the space of eight days, in the month of November, once every year, to exhibit their books and whole accounts of the revenue of the