No. 5.

The Court pronounced the following interlocutor, (26th February 1777): "The Lords having resumed the consideration of this cause, the mutual memorials given in, and condescendence and answers *hinc inde*, they find the condescendence not relevant, and therefore find the letters orderly proceeded, and decern, and find expenses due to the charger."

A petition against this judgment was (11th March 1777) refused without answers.

Lord Ordinary, *Justice-Clerk*. For Hall, *Hay Campbell*.

W. M. M.

1777. *August* 6.

INCORPORATION of TAYLORS in Edinburgh, Canongate, and Potterrow, *against* JAMES WHITE, and Others.

No. 6.

Sheriff has no power as a Police-officer to establish general regulations as to the wages of tradesmen.

See No. 375. p. 7670.

AN action was brought against the defenders, in name of the Deacon and Boxmaster of the Corporation of Taylors, for allowing their journeymen wages beyond the regulations established by an act of the Burgh of Edinburgh. The Sheriff, before whom this action came, decerned against the defenders for the sum of £2 Sterling each. Of this judgment, they brought a bill of suspension, which coming to be discussed before Lord Kennet, his Lordship "repelled the reasons of suspension, found the letters orderly proceeded, and decerned."

The suspenders contended, in a reclaiming petition, that the regulations themselves, which they were said to have transgressed, were altogether inexpedient; and that though never so expedient, the expediency could not supply a radical defect of authority. To establish regulations concerning the rate of wages, belongs to no judge or magistrate in this country at common law. A special statute is absolutely necessary. Acts of Parliament have accordingly, at different times, been made, vesting that power in such hands, and to be exercised in such manner, as the Legislature thought either necessary or expedient. Thus the act 1426, Cap. 78. confers a jurisdiction of this nature upon the "Aldermen and Council of ilk Town, sworn;" and the act 1617, Cap. 8. § 14. gives a jurisdiction of a somewhat similar kind to Justices of the Peace at their Quarter Sessions. These are the only Scots acts of Parliament which regard this matter, and no Judge or Magistrate has power to make such regulations as those in question, except in terms of these statutes. The law in England seems to be precisely in the same situation with ours. By several English statutes powers of this kind are committed to Justices of the Peace; and British statutes, such as 7th Geo. I. St. 1. Cap. 13. and 8th Geo. III. Cap. 17. have from time to time been made to enlarge these powers where they seem deficient. All these acts clearly imply, that in common law no

No. 6. Judge or Magistrate had power to interfere in this matter, otherwise such acts were unnecessary and superfluous.

The chargers founded upon three authorities in support of their plea; 1*st*, A decree of the Court of Session, 11th December 1762, approving of a regulation of the Magistrates of Edinburgh, dated 10th December 1760. 2*d*, Upon an act of the Town Council of Edinburgh, 6th May 1767, ratifying an act of the Corporation of Taylors, of the same date. 3*d*, Upon a decree of interposition of the Magistrates of Canongate, dated 12th May 1767, to an act of the Corporation of Taylors of Canongate, similar to that of the Edinburgh Incorporation. 4*th*, Upon an act of the Sheriff Substitute of Edinburgh, of date May 1st, 1767, passed upon petition of the Deacon and Boxmaster of the Corporation of Taylors in Canongate, and of the Deacon and Boxmaster of the Corporation of Taylors in Potterrow.

With regard to the *first*, the suspenders urged, that the law gives no power to the Bailies by themselves to make any regulations regarding this matter. It only authorises the Magistrates and Town Council in a body. But the judgment of the Court of Session proceeded upon a ratification of a decision of the Bailie Court of Edinburgh. With regard to this judgment of the Court, several other objections were made, particularly the grand decerniture went beyond the interlocutor of the Court, which was its warrant. But these points do not properly fall under the present question.

As to the *second* authority, among other objections it was stated, that the act of Town Council referred to, is expressly limited to the corporation of taylors in Edinburgh, and freemen in the Canongate-head; a description which can apply to none of the suspenders. With regard to the *third* authority, the chargers denied that the corporation had any power to make such regulations. Corporations may indeed make bye-laws, but these must be such as cannot either immediately or consequentially, operate beyond the limits of their own society. Thus, they may lay down rules with respect to the administration of their common stock, times for meeting, fines for non-attendance, or the like; but can make no regulation which may affect the public in general, or any other class of subjects. They could not thus make a regulation, that no suit of clothes should be made under £5 Sterling. Neither, upon the same principle, could they make the regulation in question.

Such regulation, indeed, is not only unwarranted by, but contrary to, law. Combinations by journeymen, not to work for wages under a certain rate, are unlawful. Combinations amongst master Taylors, not to give above a certain rate, must for the same reason, be unlawful also. It is not upon account of any thing personal, or peculiar to this class of men, that the agreements of journeymen are disallowed, but because they may be attended with great public inconvenience. Now, there is the same reason for disallowing the combinations of master Taylors,—perhaps greater; for they by being generally

more independent in their circumstances, have it more in their power to incommode the public, by a longer adherence to an improper resolution. No. 6.

The decree of interposition cannot aid the act. Burghs royal alone are mentioned in the act 1426, and Canongate is only a burgh of regality.

The *last* authority referred to by the chargers, was maintained by the suspenders to be the most extraordinary of all. No statute confers such powers upon Sheriffs. There is nothing in the nature of the office from which such power can be inferred. If Sheriffs have power to restrain from giving more, they have the same power to restrain from giving less. But such an extension of the jurisdiction of Sheriffs beyond the limits prescribed to their power by law, leads to consequences of a very delicate, and of a very dangerous nature.

Upon the general ground of expediency, it was argued for the suspenders, that there is no peculiarity in the trade of a taylor, which should render regulations necessary to it, which are not necessary to other professions; that every profession will find its own proper rate of wages, in proportion to the state of the country; and that forced regulations of this kind can have no effect, but to drive the best tradesmen away, or oblige others to have recourse to indirect methods, in order to evade the effect of regulations which cannot possibly be carried into execution.

On the part of the chargers, the expediency of the regulations in question was much insisted upon; and for proof of their necessity, reference was made to the various combinations which had of late years taken place among the Journeymen Taylors of Edinburgh; when every public mourning, every regimental clothing, every occurrence that employed their master in work requiring extraordinary dispatch, was laid hold of, for the purpose of extorting from their masters an augmentation of wages.

With regard to the argument, that the Town-Council in a body, and not the Magistrates, have the power of settling wages, it was answered, that whatever might be the words of the statute, powers of this nature have by immemorial practice been exercised by the Magistrates alone; and as to their being sworn, every Magistrate is on oath, in all the branches of his duty, in virtue of the oath *de fideli administratione* administrated to him at the entry of his office.

The act 1426 makes no distinction of burghs royal and other burghs, but uses the general word *Town*.

As to the principal argument regarding the power of the Sheriff, there is indeed no particular statute authorising him to make such regulations. Yet it seems a power inherent in the Sheriff, by the ministerial nature of his office, and is analogous to that of striking the fiars of the grain. These unlawful combinations, besides, are direct breaches of the peace, and fall therefore under the cognizance of Sheriffs, who are the Judges Ordinary to whom the preservation of the public peace was committed, before Justices of the Peace were instituted in this country in the year 1609.

No. 6.

The Court were of opinion that Sheriffs were possessed of no such jurisdiction. It was observed that the power of regulating wages is committed to Justices of the Peace on liberal and constitutional ideas. The Sheriffs are properly officers of the Crown, but Justices of the Peace and Magistrates of Burghs are more popular, more connected with, and supposed to be more kindly towards the inhabitants. It was also observed, that the acts of council had the effect of regulating the wages of journeymen only when employed for the usual hours. Extraordinary work was entitled to extraordinary payment. To give this power of regulating wages to incorporations, it was further observed, would be more dangerous than even giving it to the Sheriff.

The Court (6th August 1777), Found that the Sheriff had no jurisdiction.

Lord Ordinary, *Kennet.* For the Suspenders, *Rolland.* Alt. *W. Erskine.*

J. W.

*** By an after decision, Master Taylors of Edinburgh against Journeymen Taylors, No. 337. p. 7623. 28th July 1778, the Court found that Justices of the Peace had sufficient authority to make regulations fixing the wages of mechanics.

1799. *November* 12.

The LORDS of the TREASURY and his MAJESTY'S ADVOCATE, *against* ADMIRAL KEITH STEWART'S TRUSTEES, and Others.

No. 7.

Decree of constitution, for the purpose of being the foundation of adjudication, pronounced, reserving all objections *contra executionem*, in an action at the instance of the Lords of the Treasury, against the representatives and cautioners of a receiver-general, although the pursuers were insisting in the Court of Exchequer,

THE Lords Commissioners of the Treasury, with his Majesty's Advocate as their attorney, raised an action before the Court of Session, against the trustees, the eldest son, and the cautioners of Admiral Keith Stewart, for the balance alleged to be due by the deceased as receiver-general of the land-tax, &c.

In the progress of the action, the pursuers stated its object to be merely to obtain a decree of constitution, upon which adjudication might be raised against Admiral Stewart's landed property in Scotland.

The defences were, 1*mo*, That by 6th Anne, C. 26. § 5, 6, 7, a debt due to the Crown can be sued for only in Exchequer; 2*do*, That the pursuers had raised and were insisting in a previous action against the defenders in Exchequer, which made the present action incompetent, on the ground of *lis alibi pendens*.

" The Lord Ordinary found, That, by the law of Scotland, and also by the " act of the 6th of Queen Anne, C. 26. this Court is alone competent to the " trial of any question concerning, or claims brought against, the heritable " estate of a debtor to the Crown; and, in respect the pursuers' counsel have " limited the conclusions of their action to a decree of constitution, in order to " found an adjudication of their debtor's heritable estate, and that the defenders " have not shewn that they have yet paid, or accounted for the sums claimed " by the pursuers, decerned against them conjunctly and severally, for the