

1778. August 9. FOOTE and MARSHALL *against* MAJOR STEWART.

FOOTE and Marshall were brought before the Commissioners of Supply for the county of Kinross, upon the comprehending act, 18th Geo. III. and were ordained to be delivered up to Major Stewart. At the same time, they were incarcerated by warrant of the Commissioners. Foote and Marshall offered a bill of suspension and liberation, which, with answers and replies, were taken to report by the Lord Ordinary.

*Pleaded* for the complainers; The words of the act of Parliament are, 'That all able-bodied, idle and disorderly persons, who cannot, upon examination, prove themselves to exercise, and industriously follow, some lawful trade or employment, shall be levied,' &c. The complainers, when brought before the Commissioners, offered instant evidence that they did not fall within the description of the act, both by certificates of their good behaviour, and by the immediate testimony of witnesses, to prove that they were hired servants, and therefore following 'a lawful employment.'—The Commissioners, contrary to the terms of the statute, refused to receive the evidence of the certificates, or the witnesses.

Other parts of the proceedings of the Commissioners, were likewise complained of as illegal.

The charger, waving entirely any vindication of the proceedings of the Commissioners, objected to the competency of the Court, and *contended*, that they had no jurisdiction to review the sentence of the Commissioners acting under the statute. The powers conferred on the Commissioners are created by the statute, out of the course of common law, on account of the necessities of the State, mentioned in the preamble of the act. They are ordained to examine the persons brought before them, and, if found within the description of the act, to deliver them to the military officers on their receipt. It is declared, 'That, from and after such delivery, and reading the said articles of war, ever person so raised shall be deemed a listed soldier to all intents, &c.; and the person so listed shall not be liable to be taken out of his Majesty's service by any process, other than for some criminal matter.' No civil court, therefore, can give any relief to such persons as are adjudged by the Commissioners. A mode of reviewing their sentence, by a second meeting of the same Commissioners, is provided in the act itself. If the second meeting are of opinion that the person adjudged does not fall within the description of the act, they are required to certify the same to the Secretary at War, 'who, on receipt of such certificate, shall cause the man forthwith to be discharged.' This part of the act likewise shows, that it was not the intention of the Legislature to allow any review of the sentences of the Commissioners in courts of law; *Robertson contra* the Justices of Stirlingshire, No 73. p. 7340. A contrary interpretation would defeat the purposes of the act.

No 100.

The Lords refused to review the sentence of Commissioners of Supply under the comprehending act, 18th Geo. III.

No 100.

*Replied* for the complainers; The rule of law is, that, where a new civil jurisdiction is created by statute, with a power to the new erected court to judge in special matters, its judgments are subject to the review of the Supreme civil Court, unless by the statute it is declared otherwise in express terms. Buchanan against Towart, No 81. p. 7347.; Ersk. B. I. T. 2. § 7. A review of the proceedings in question cannot be denied without counteracting this important maxim of law; for this statute has nowhere said that the judgments of the Commissioners shall not be subject to the review of the Supreme Court.

It is not even to be implied or supposed from the passages founded on. The power of reviewing their own sentence, given by the statute to the Commissioners, affords no argument against the jurisdiction of the Court to review the sentences of both, or either of the meetings. In most cases, an appeal is admitted from the sentences of Justices of the Peace to the quarter-sessions. But the Supreme Court is entitled to review the proceedings of all their meetings, unless excluded by statute.

THE COURT were of opinion, that, from the terms of the statute, it was the meaning of the legislature, that the sentence of the Commissioners should not be reviewable by any Court of law.

THE COURT refused the bill.

*Fol. Dic. v. 3. p. 342. Fac. Col. No 44. p. 77.*

1797. June 25.

DAVID PATILLO *against* SIR WILLIAM MAXWELL and Others.

No 101.

The Court was of opinion, that its inherent and constitutional power of review was not excluded by the comprehending act.

DAVID PATILLO, an inhabitant in the county of Dumfries, was (on the 13th May 1779) brought before a meeting of the Commissioners for executing the comprehending act, 19th George III. charged with being a disorderly person, following no employment, and, therefore, within the description of the act. This was denied by Patillo, who further *insisted*, that, at any rate, the act expressly prohibits enlisting any person in his circumstances, as he was above 50 years of age, and under the size required by the act.

The minutes of this meeting bear, that Patillo was examined by the Justices; and evidence with respect to his character being called, was found to be a person falling within the description of the act, and was therefore adjudged to serve his Majesty in terms thereof; being aged, as he says, but without producing any poof thereof, fifty or thereby. And he was accordingly delivered over to the officer appointed to receive him, according to the act of Parliament; the said Patillo is four feet five inches high. Patillo was forthwith sent to jail by the recruiting-officer; and he afterwards presented a bill of suspension and liberation from prison, on finding sufficient caution that he should again make his appearance, when the question as to the legality of these proceedings should receive the judgement of the Court. In evidence of the fact