

1787. July 12.

JOHN HALL and the PROCURATOR-FISCAL of the Sheriff-Court of Roxburghshire,
against JOHN BILLERWELL.

BILLERWELL, a shopkeeper, and other traders in the town of Jedburgh, entered into a combination, by which they agreed to refuse the accepting of such halfpence as were of the coinage of the present King. The reason assigned for this resolution was, that there were then great numbers of counterfeits of that coin in circulation, which it was extremely difficult to distinguish from the genuine halfpence.

Hall having proffered to Billerwell, for some of the articles in his shop, several pieces, bearing the impression of the halfpence of his present Majesty, the latter rejected them with disdain; upon which Hall, with the concurrence of the procurator-fiscal, applied by petition to the Sheriff, complaining of the above-mentioned combination, and of this incident, which was the consequence of it; and praying, that Billerwell might be found liable in damages to him, and in a fine to the public.

The cause was brought under the review of the Court; when, after inspection made by the officers of his Majesty's mint, of the halfpence in question, and a report given by them, bearing, "That though they had good reason to believe the halfpence to be genuine coins, yet their appearance was not without suspicion."

The LORD ORDINARY assoilzied the defender.

The pursuers having reclaimed against this interlocutor,

The Court "adhered to it, so far as respected Hall, the private pursuer; but found the combination entered into by the respondent, not to receive in payments the copper coin of his present Majesty, George III. was improper and illegal; therefore fined and amerced him in the sum of L. 5 Sterling to the poor of the parish of Jedburgh; and farther found him liable in such expenses as the procurator-fiscal should depone he laid out previous to the date of this interlocutor."

Lord Ordinary, Swinton.

Act. G. Fergusson.

Alt. Maconochie.

Clerk, Home.

S.

Fol. Dic. v. 4. p. 36. Fac. Col. No 338. p. 519.

1798. December 11.

The CORPORATION of MASTER-SHOEMAKERS in Edinburgh, against
THOMAS MARSHALL and Others.

IN 1797, a few of the superior workmen among the journeymen shoemakers of Edinburgh insisted for a rise of wages, to which their masters yielded; but

No 103.
Combinations
against re-
ceiving mo-
ney of a par-
ticular coin-
age, illegal.

No 104.
Where jour-
neymen in a
body give up
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No 104.
 a view to
 force a rise in
 their wages,
 the Judge Or-
 dinary, in or-
 der to break
 the combina-
 tion, may or-
 dain them to
 return for a
 limited time
 to the service
 of their for-
 mer masters,
 although they
 should have
 been under no
 contract to do
 so, unless sa-
 tisfactory rea-
 sons for not
 returning can
 be pointed
 out by indivi-
 dual journey-
 men.

their example being followed by the other journeymen, the master shoemakers held a general meeting in 1798, at which they formed a scale of wages, which was to take place in all their shops on a specified day. The wages thus fixed were lower than they had given to some of their workmen in the preceding year, but higher than at any former period. At this meeting, the masters also entered into other regulations to prevent the journeymen from raising their wages.

In consequence of these measures, almost all the journeymen shoemakers in Edinburgh, and its vicinity, at once gave up working for their masters. It appeared, that many of them were members of a society connected with others of the same kind in England and Scotland, from the funds of which they received assistance, while they remained idle. They also set up a shop without the liberties of Edinburgh, where they proposed to serve the public with boots and shoes made by themselves.

The Corporation of shoemakers complained of these proceedings to the Justices of Peace of the county, by a petition, craving, that the journeymen should be ordained to return to their work, and that the Justices would make a table regulating their wages.

The Justices, while they severely reprimanded the complainers for pretending to fix a general rate of wages by their own authority, which was in fact entering into a combination themselves, in order to check the combination of the journeymen, pronounced the following judgment; "Find, That except in one or two recent instances, no higher wages have been given than those contained in the scale proposed by the masters; and that the same, in the opinion of the Justices, affords a proper and reasonable allowance to the workmen: Therefore, ordain the journeymen to return to their respective masters, and work at the prices stated in said scale till further orders; with certification, if they fail, that warrant will be granted for incarcerating such of the journeymen till they find caution so to do: But in case the journeymen find themselves aggrieved, and wish the matter more fully investigated, allow them to instruct such circumstances as may entitle them to a higher rate of wages."

The journeymen having complained of this judgment by bill of advocacy, the Lord Ordinary on the bills sisted procedure, and reported the cause, and the Court remitted it to his Lordship to pronounce the following judgment: "The LORD ORDINARY, in terms of the remit from the Court, passes this bill, to the effect of trying the question as to the rate of wages, and the means that may have been used by either of the parties for increasing or diminishing them; but recalls the sist, that the decree of the Justices of Peace may be carried in to execution, to the effect of obliging the journeymen to work, in the mean time, at the prices stated in the scale or table, given in by the original pursuers, reserving the claim of the journeymen to the increased wages demanded by them till the issue of the cause; and to prevent any dispute about the

amount thereof, ordains the pursuers every Saturday evening, when they pay their journeymen their interim wages, to furnish them with a note of the wages reserved: And ordains the pursuers to find sufficient caution in the clerk's hands for payment of these reserved wages, in the event of the same being found due."

Notwithstanding this judgment, a great proportion of the journeymen having still refused to return to their former masters, the Corporation presented a complaint to the Sheriff against Marshall, Culbertson, Arnot, Henderson, and five others, who appeared to them to be the ringleaders of the association.

The Sheriff ordered them before him for examination.

Marshall declared, that he would not return to his former master, "because he considered it as an act of oppression to be bound to work for any given time to any master."

Culbertson declared, that he was willing to work to his former master at the wages he had for some time past received, which were higher than those fixed by the Justices, but not otherwise.

Arnot "declared, that about four or five months since, he entered as a freeman with the Incorporation of Calton; and that he was not willing to return to his former master upon any wages, as he had more work of his own than he could overtake."

Henderson declared, that he had lately lost a friend who was a carter, "and was a good deal employed in driving his cars till another could be got;" and that he would have returned to his former master at the rate of wages fixed by the Justices, had it not been for that circumstance.

The other five declared, that they had full employment as shoemakers on their own account; that they were not, therefore, inclined to serve as journeyman to any master; that some of them were entitled by privilege to carry on business within the city; and that work done by the others was such as did not encroach on the rights of the Corporation.

The Corporation denied the facts stated by these five persons, while they on the other hand offered to join issue in a proof of them.

The Sheriff granted warrant for committing to prison the whole nine persons complained of, "ay and until they respectively find caution acted in the Sheriff-court books of Edinburgh, that they shall return to, and work to their masters, in whose employment they were upon the 27th day of October last, when the masters' scale of wages was proposed to the journeymen, and that in the same way they did prior to that date, and that at the same wages, and on the terms mentioned in the interlocutor of the Court of Session of the 28th ultimo, and that for one month at least, from the time they shall begin to work, their said masters always giving them constant work, and implementing their part of said interlocutor in all points."

No 104.

The defenders presented a bill of suspension against this judgment, which, with answers for the Corporation, and replies, the Lord Ordinary on the bills took to report.

Pleaded for the complainers; The combination of the journeymen is entirely at an end by returning to their work. They are under no contract to serve their former masters, and it is a matter of perfect indifference to the community, whether they work to one master or to another, or on their own account. The Sheriff's interlocutor, in fact, adjudges their service to particular persons for a limited time, which is neither justified by the former judgment of this Court, nor consistent with the liberty of the subject.

Answered; It is undoubtedly true in the abstract, that every individual may change his master or his profession whenever he thinks fit. But the judgment of the Sheriff is the result of the extraordinary situation into which matters were placed by the combination entered into by the complainers themselves and their associates, which makes it necessary, in order to destroy it, that they should be ordained for a limited time to return to their former masters; case of Brewers of Edinburgh in 1725. For if the pretences held out by the complainers, of entering into a different line, or of having plenty of business on their own account, are sustained, a plausible reason for remaining idle will never be wanting to any member of the combination. If there be any hardship in the Sheriff's judgment, the complainers have their own improper conduct alone to blame for it.

THE LORDS, while they had no doubt but that every journeyman might quit his master's service *debito tempore*, were equally clear, on the ground stated for the chargers, that in the circumstances of this case, the Sheriff's judgment was right with regard at least to seven of the complainers. They thought, however, that the facts stated by Arnot and Henderson, if true, afforded a sufficient reason for their conduct. They, therefore, unanimously passed the bill of suspension as to these two complainers, and refused it as to the rest.

Lord Ordinary, Cullen.

For the Corporation, Hope, Monypenny, Inglis.

Alt. H. Erskine, Fletcher.

R. D.

Fac. Col. No 97. p. 227.

No 105.

A parochial schoolmaster holds his office *ad vitam aut culpam*, and an obligation taken from him by the heritors,

1799 February 20. LEWIS ALEXANDEE DUFF against Sir ARCHIBALD GRANT.

THE parochial schoolmaster of Monymusk, on his appointment in 1782, wrote a letter to the late Sir Archibald Grant, the sole heritor of the parish, in which he admitted, that he had been taken on trial till the next term, and was afterwards to hold the office at the pleasure of Sir Archibald. He at the same time renounced all views of becoming a clergyman.