

The Lords refused the bill, reserving the claim of the suspenders for an additional price.

Lord Ordinary, *Ankerville*. For the Candlemakers, *Lord-Advocate Dundas*. Alt. *Baird*.
D. D. *Fac. Coll. No. 190. p. 437.*

No. 8.

1801. *February 14.* LAURENCE TURNBULL *against* JOHN BROWN.

LAURENCE TURNBULL brought an action before the Justices of the Peace acting under the small debt acts (35th Geo. III. C. 123; and 39th and 40th Geo. III. C. 46.) against John Brown, writer and messenger. The libel concluded for "Five pounds of damages for fraudulently taking up money, and allowing another messenger to do the same in a cause of law-burrows, and keeping up a bond of caution, by which means the complainer's wife Janet Turnbull was committed to prison, when in a bad state of health."

The Justices decerned against Brown for £3.

Although the statutes above referred to, declare that the sentences of the Justices are reviewable only by reduction, Brown complained of their judgment by a bill of advocation, on the footing that they had exceeded their powers. The statutes, he contended, conferred on them a jurisdiction only in small questions of debt arising out of the ordinary transactions of life, but the present action, although its immediate patrimonial consequences were insignificant, arose, not from a contract, but from an alleged delict of the defender in his professional capacity. As deeply affecting his reputation, it was therefore a question of too serious a nature, for the Legislature, to intend, that, even in the first instance, it should be decided according to the summary forms of the Small-debt court.

Two of the Judges, moved by the complainer's reasoning, were for passing the bill, but the Court refused it by a considerable majority.

Lord Ordinary, *Balmuto*.

R. D.

Fac. Coll. No. 220. p. 498.

1804. *March 6.* PLUMBER and Another, *against* HASTIE and Another.

A REGULATION of police was made in the year 1799 by the Baron-Bailie of Dalkeith, for the purpose of preventing the butchers of that place from exposing to sale tallow in an impure state, which it seems they had been accustomed to do, by mixing with it certain extraneous matter, increasing its weight, and diminishing its purity. For this purpose, two searchers were appointed by the

No. 9.

It is competent for Justices of the Peace, under the small debt acts, to award damages limited to 5*l.* against a messenger for professional misconduct.

No. 10.

Regulations of a Baron-Bailie for ascertaining the purity of commodities previous to their

No. 10. being exposed to sale, have effect, though the purchaser be without the jurisdiction of the Burgh.

See No. 8. *supra*.

Bailie, which appointment was afterward sanctioned by the Sheriff, who interposed his authority to the measure, and ordained all the rough fat to be carried to the weigh-house of Dalkeith, to be inspected and cleaned, under certain penalties. This regulation was afterward confirmed by a judgment of the Court of Session, the cause having been advocated by the butchers of Dalkeith.

James Plumber and James Smith, the tallow-searchers of the burgh, presented, in the month of October 1803, a complaint to the Baron-Bailie against Henry Hastie, butcher in Dalkeith, stating, that he had evaded the regulation, by sending off a certain quantity of tallow privately, and selling it in Edinburgh. In his answers to the complaint, Hastie declined to give any particular account of the quantity of tallow that he had thus sold, and contented himself with denying that the regulation was applicable to him. The Bailie ordained him instantly to confess or deny whether he had delivered the tallow unsearched, as stated by the complainers, with certification, that otherwise he would be held confessed as to the quantity, and judgment given accordingly.

A bill of advocacy was presented against this judgment of the Baron-Bailie, which, upon being advised with answers and replies, was passed by the Lord Ordinary. Upon this the tallow-searchers presented a petition, and

Pleaded: By the former decision of the Court, the right of the Baron-Bailie of Dalkeith to make regulations with regard to the market, and the propriety of this particular regulation with regard to the sale of tallow, were explicitly recognised. Indeed, the right of a Baron-Bailie to make such regulations has been long established; *Barthol. Vol. 1, p. 426; Magistrates of Paisley against Adam, 30th November 1790, No. 389, p. 7687;* and the regulation here made is essentially the same as what prevails in most of the Royal Burghs in Scotland. But if this bill of advocacy be passed, it would be in fact annulling this restriction altogether. It is true, the Baron-Bailie's power extends no farther than the market of Dalkeith; but no part of the tallow is sold by the butchers in the public market: It is altogether disposed of by private contracts, for which there is generally a competition among the tallow-chandlers. If, therefore, it were in the power of a butcher, by making a particular contract with a tallow-chandler, to evade the necessity of submitting the tallow to examination, the regulation would be entirely defeated.

Answered: The regulation of the Baron-Bailie does not apply to this case; because although that magistrate may have powers to make rules for the market within his Burgh, he can never prevent an individual from entering into such contracts as occur in the usual course of trade with third parties, and receive implement beyond the limits of his jurisdiction. In this case the purchaser of the tallow does not reside in the town of Dalkeith, nor does he carry on any trade within that Burgh. He is entitled therefore to demand this tallow for the stipulated price, according to the contract he entered into, without being obliged to pay any regard to the regulation of the Bailie; and if the butcher furnishes it to him in such a state of purity as had been agreed on between

them, it is all that can reasonably be required. The regulation may be extremely proper when confined to the market of the Burgh; but the Bailie has no power to enact any regulation to be binding over the whole country, and to apply to persons over whom he has no jurisdiction. *Edly*, Even if the complaint were just, the tallow-searchers are not the persons who have a right to make it.

No. 10.

The Court, upon considering the petition with answers, (8th February 1804) altered the interlocutor of the Lord Ordinary, and remitted to his Lordship to refuse the bill, and to find expenses due.

A reclaiming petition against this interlocutor was refused without answers.

Some of the Judges thought, that the regulation of the Baron-Bailie was strictly local, and could not be extended over the trade in general. But the majority of the Court held, that this regulation, which seemed proper in itself, would be totally nugatory, if the commodity sold by the butchers within the Burgh to strangers were not be comprehended under it.

Lord Ordinary, *Cullen*.For Advocators, *Baird*.Agent, *Geo. Clapherton*, W. S.Alt. *Corbet*.Agent, *Alex. Ferris*.Clerk, *Menzies*.

J.

Fas. Coll. No. 154. p. 345.

* * On the same same day, in the case of *Still, &c.* against the Magistrates of Aberdeen, the Court found the same duty exigible upon rough tallow as upon refined.

1804. *June 29.* Sir BENJAMIN DUNBAR and Others, Petitioners.

THE presbytery of Caithness having assessed the heritors in the sum of £1250. 15s. 11d. for rebuilding the church of Wick, the Reverend William Sutherland, the minister of the parish, became the undertaker of the building. For this purpose, he granted to the presbytery (7th May 1796) a bond along with cautioners, under a penalty of £250, for executing the work properly.

The price was payable by instalments, and accordingly was regularly paid by the heritors.

By the terms of the bond, the church was to be finished in the month of January 1798, according to a particular plan. When Mr. Sutherland applied to the presbytery (18th June 1799) to have the church inspected, the heritors contended, that besides not having finished the work in the time to which he had been restricted, he had not acquitted himself of the obligation, either in his observance of the plan, or in the execution of the work. This the heritors offered to verify, by the testimony of the tradesmen who had been employed.

No. 11.

In building a church, the heritors have the right of superintending the operation; and when the presbytery act, they are held to act entirely for the heritors.