

No. 28.

Lady MARY L. CRAUFURD, Appellant—*Forsyth—Adam.*
 ARCHIBALD REID, Respondent.—*Fullerton—Brougham.*

Master and Servant.—Circumstances in which it was found, (reversing the judgment of the Court of Session,) that a mistress was entitled to dismiss a servant who had been absent from his service for four days without leave.

March 13. 1822.

2^D DIVISION.
 Lord Glenlee.

IN 1810, Lady Mary Lindsay Craufurd hired Reid to be her principal gardener at her seat called the Priory in the county of Fife, where she had an extensive garden, with pinery, hot-houses, &c. Prior to the month of February 1812, it was arranged that Reid should leave her service at Martinmas thereafter. On Thursday the 6th of February (being the day of the King's fast) Reid went to Edinburgh, and did not return till the following Sunday. Lady Mary immediately dismissed him; and he having declined to remove from a house which he possessed as her gardener, she raised an action before the Sheriff of Fife to compel him to do so. In defence he stated, that although he had obtained no special leave to go to Edinburgh, or to be absent, yet he had previously received general instructions to procure a quantity of forest trees, which were to be planted at this time of the year;—that, with the view of getting these trees, he went to Edinburgh, where he ordered them;—that by various accidents he had been detained longer than he intended, but had only been absent two working days;—that, on former occasions, he had repeatedly, in consequence of such general instructions, gone from home on the business of his mistress, when convenient, without obtaining special liberty to do so, and that no complaint had been made on that account. To this it was answered, that he had gone to Edinburgh on his own private business; that although he had made a pretence of purchasing trees, yet he had not done so; and that he had no such general instructions as alleged. The Sheriff having allowed a proof, it appeared that Reid had called on several nurserymen, and had ordered a large quantity of forest trees for Lady Mary; but that he had afterwards forbidden them to be sent, and that he had told two of the witnesses that he had come to Edinburgh to inquire for a situation as a gardener. The Sheriff found that Lady Mary 'was warranted in dismissing him from her service, 'and that he was bound to remove from the house mentioned in 'the petition. Reid having brought an advocacy, and raised an action concluding for wages till Martinmas 1812, Lord Glenlee reported the case; and the Court, after being equally divided in opinion, and having called in Lord Pitmilley, found 'that the 'dismissal of the pursuer Archibald Reid by the defender Lady

‘ Mary Lindsay Craufurd from her service was not warrant-
 ‘ ed;’ and found him entitled to wages and board-wages to the
 term of Martinmas subsequent to the dismissal. To this inter-
 locutor they adhered on the 19th of November 1816.* Lady
 Mary then entered an appeal, 1. Because Reid had no right,
 without special leave, to be absent from her service for four
 days; and, 2. Because, as he had not shown any sufficient justifi-
 cation, and it had been proved that he had gone upon his own pri-
 vate business, and as there was no evidence of the alleged general
 instructions, she had a right forthwith to dismiss him; and conse-
 quently he had no claim to wages subsequent to that period. To
 this it was answered, that he had, in point of fact, been absent on
 the business of his mistress; and that although he had not ob-
 tained special leave to go at the particular time, yet, from former
 practice, he was led to suppose that this was left to his own dis-
 cretion. The House of Lords ‘ Ordered and adjudged that the
 ‘ interlocutors complained of be reversed.’

J. CHALMER,—J. RICHARDSON,—Solicitors.

(*Ap. Ca. No. 10.*)

ROBERT DOWIE, Appellant.—*Clerk—L’Amy—Brownlee.*

No. 29.

JAMES DOUGLAS, Respondent.—*Jeffrey—Hunter.*

Jurisdiction—Consuetude—Reparation.—Held (affirming the judgment of the Court
 of Session,)—1.—That the Bailies of the burgh of barony of South Leith have, by
 consuetude, a jurisdiction over the inhabitants of the separate and independent terri-
 tory of the Citadel of North Leith, notwithstanding a declinature.—2.—That they
 are entitled to exercise that jurisdiction, when sitting within the territory of South
 Leith.—3.—That the jurisdiction of burghs of regality, of which the Magistrates of
 a royal burgh are superiors, is not affected by 20. Geo. II. chap. 43; and,—4.—
 That damages are due for a blow inflicted with a heavy iron bar on the head, to the
 danger of life, although the party so struck had previously given a slight blow or push
 with his hand, and was alleged to have begun the affray.

DOWIE was proprietor of a small house situated in Citadel
 street, North Leith, which was possessed by the respondent Dou-
 glas as his tenant, and his own residence was also in that street.
 In the month of December 1814, Dowie having gone into the
 shop of Donald M’Kenzie, smith in North Leith, where Douglas
 happened to be, a dispute occurred between them relative to
 the payment of the rent of the above house; and after a good deal of
 altercation, in the course of which Douglas had made use of some

March 27. 1822.

1ST DIVISION.
 Lord Alloway.

* Not reported.