

No. 30. JAMES GLASS and Others, for the Corporation of HAMMERMEN  
of LEITH, Appellants.—*Gifford—Baird.*

WILLIAM HUNTER, Respondent.—*Lord Advocate Rae—Cullen.*

*Local Militiaman—Stat. 54. Geo. III. c. 19.*—Held (affirming the judgment of the Court of Session,) that a corporal of the First or Highland Regiment of Local Militia for the county of the city of Edinburgh having volunteered his services, and served at Musselburgh in terms of the above statute, was entitled to the privileges of a freeman, without entering with the incorporation of the particular trade which he exercised.

March 27. 1822.

2<sup>D</sup> DIVISION.  
Lord Pitmilley.

By the 179th section of the 52. Geo. III. c. 68. it is enacted, that ‘ every person having served in the local militia, when  
‘ drawn out into actual service, being a married man, may set up  
‘ and exercise any trade in any town or place within Great Britain,  
‘ without any let, suit, or molestation of or from any person or per-  
‘ sons whomsoever, for or by reason of using or exercising such trade,  
‘ as freely, and with the same provisions, and under the same re-  
‘ gulations, and with the like exception to the two Universities in  
‘ England, as any mariner or soldier can or may do by virtue of an  
‘ act passed in the 24th year of his present Majesty’s reign.’ In  
1814, the ‘ Legislature, by the 54th Geo. III. c. 9, and on the  
‘ preamble that it is highly expedient, in the present circumstances,  
‘ that his Majesty should be enabled to make the most effectual  
‘ use of the disposable military forces in his realms in aid of the

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‘ case. If there had been no consuetude as to the place where the jurisdiction was  
‘ exercised, there might have been some difficulty upon the other point of the case; but,  
‘ as the fact stood, there could be none; for a clear consuetude had been proved for up-  
‘ wards of 100 years. This being proved, the cases of Portsburgh and the Gorbals  
‘ must regulate the decision of the present question.

‘ The LORD PRESIDENT observed, that all the cases that had been produced to  
‘ prove a consuetude went only to show that, in such a number of instances, the parties  
‘ had found it convenient to submit to the jurisdiction. In the case of Blair there was  
‘ no declinature, which distinguished it from the present, in which the jurisdiction  
‘ had been objected to ab initio, and consequently had not been prorogated by the  
‘ suspender. His Lordship did not conceive that the Bailies of Leith had any more  
‘ jurisdiction, in questions relating to inhabitants of the Citadel, than the Court of  
‘ Session has in cases of teinds. He, however, concurred in thinking that the juris-  
‘ diction, as to its extent, was reserved by the jurisdiction act, as found in the cases  
‘ of Gorbals and Portsburgh.

‘ LORD BALMUTO having expressed a similar opinion, the cause stood over for the  
‘ decision of LORD ALLOWAY, who said, that although it was quite clear that no  
‘ Judge had a right to exercise jurisdiction extra territorium, yet that full effect must  
‘ be given to an established practice. The Bailies of Leith have exercised this juris-  
‘ diction beyond the memory of man. There is no court-house within the Citadel;  
‘ and the uniform practice of the Bailies has been to judge of the Citadel causes.  
‘ The decided cases cited for the charger leave no doubt as to the effect of this estab-  
‘ lished practice.’

‘ efforts now making upon the continent of Europe ; and for that March 27. 1822.  
 ‘ purpose should be empowered to accept the services of such parts  
 ‘ of the local militia of Great Britain as may make voluntary offers,  
 ‘ duly certified by the respective commanding officers, of serving  
 ‘ under the act, out of the counties within which they shall be en-  
 ‘ rolled, and as his Majesty may think proper to permit, so to,  
 ‘ extend their service in consequence of such voluntary offers as  
 ‘ aforesaid,’ enacted, ‘ That it shall be lawful for his Majesty, by  
 ‘ any order signed by the Principal Secretary of State, directed to  
 ‘ the commanding officer of any regiment, battalion, or corps of the  
 ‘ said local militia foresaid of Great Britain, to propose to such  
 ‘ regiment, battalion, or corps, or any part or parts thereof, so to  
 ‘ extend their services, under such rules and regulations, and upon  
 ‘ such allowances, as his Majesty may think fit to make and ap-  
 ‘ point in that behalf, subject nevertheless to the restrictions  
 ‘ contained in this act ; and it shall be lawful for his Majesty to  
 ‘ call out and employ from time to time any such parts or pro-  
 ‘ portions of any local militia so volunteering as aforesaid, at  
 ‘ such times and in such manner as he shall think fit, out of their  
 ‘ counties, for any period not exceeding such as are allowed by  
 ‘ this act.’ It was further declared, that this period of ‘ extend-  
 ‘ ed service’ should not exceed 42 days in any one year, and  
 ‘ that all the rules, regulations, provisos, powers, authorities,  
 ‘ penalties, forfeitures, clauses, matters and things in the said  
 ‘ acts respectively contained as to the local militia, when embo-  
 ‘ died for service in case of invasion, shall extend and be con-  
 ‘ strued to extend to the local militia when serving under any  
 ‘ such voluntary offers under this act, out of the counties within  
 ‘ which they are enrolled.’

In consequence of this act, a proposal was made to the first or Highland regiment of Edinburgh local militia to volunteer in terms of it, and accordingly they agreed to do so. . The respondent Reid was at that time a corporal in the regiment, and he, along with the other officers and soldiers, duly subscribed an obligation to subject themselves to the enactments of the statute. Immediately thereafter a precept was issued by the Lieutenancy of the county of the city of Edinburgh, requiring the regiment to assemble at Edinburgh, with the view of being called out for service, under the 54th of his present Majesty, chap. 19. Previous, however, to the assembling of the regiment, official orders were given to the commander that the regiment was to muster at Musselburgh and Fisherrow, and he was desired immediately thereafter to report himself to the General of the district. These orders were obeyed, and the regiment did duty at these re-

March 27. 1822. spective places (in the neighbourhood of which there was an extensive depôt of French prisoners) for 42 days, the men receiving the marching guinea, and being otherwise put on the same footing as the regular militia. Reid served during that period as a corporal, and received a certificate from the proper officer to that effect, and that he had been called out under the provisions of 54th Geo. III. Having thereafter commenced trade as a blacksmith in South Leith, without entering with the Incorporation of Hammermen, Glass and others, as officé-bearers, presented a petition to the Bailies of Leith, praying for interdict, damages, and fine. Decree in absence was pronounced; and a charge having been given to Reid, he brought a suspension, on the ground that he was entitled, by virtue of the above statute, and by having been on actual service, to the privileges of a freeman. Lord Pitmilley suspended the letters simpliciter; and the Court, on the 19th of November 1818, adhered to his interlocutor.\* Glass and others then appealed to the House of Lords, and contended that Reid was not entitled to the privileges claimed by him, because the regiment had not been marched out of its county, seeing that it had done duty at Musselburgh, situated in the county of Mid Lothian; and, 2. Because the service was not of that nature for which the benefits and privileges were intended to be conferred, there having been merely an extension of the time for the ordinary annual training, and not that actual service which was contemplated by the Legislature. To this it was answered, 1. That in relation to the militia, the city of Edinburgh is a separate county from that of Mid Lothian, and has accordingly a separate lieutenancy; that Musselburgh is not within the bounds of the county of the city of Edinburgh, but is under a different lieutenancy, and therefore the regiment must be considered as having served out of the county within which it was enrolled; 2. That the regiment was called out for service in terms of and under the provisions of the 54th Geo. III., and that the respondent performed the service required by that statute; and, 3. That having done so, he was entitled to the privileges thereby bestowed. The House of Lords ‘Ordered and adjudged that the interlocutors complained of be affirmed, with £100 costs.’

*Respondent's Authority.*—Kirkwood, Jan. 19. 1811, (F. C.)

SPOTTISWOODE and ROBERTSON,—J. RICHARDSON,—Solicitors.

(*Ap. Ca. No. 13.*)

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\* Not reported.