

rule;—as, on the one hand, it would be extremely unjust, when a servant, from bad health, has become unable to discharge his duty, if his master could for that reason withhold the wages previously earned; so, when a similar misfortune befalls the master, it would be not less unjust, were the servant's claims to suffer no limitation. The claim thus arising, either to master or servant, ought to be restricted to the actual damage; and therefore, all that can in this case be demanded, is the difference between the wages formerly stipulated and those actually earned.

*Answered*, In the ordinary case of master and servant, it being understood that each party, after reasonable notice, may give up the bargain at the ensuing term, it is just that the death or disability of any of them should be attended with the same effect. But where, by special agreement, the obligations of the parties are to endure for an unusual period, the conditions of the bargain are to be accurately fulfilled. There, it is to be presumed, that the certainty of employment was in the view of both parties; and therefore, to disappoint the servant of that advantage, without an increase of his wages, would be unjust; and if, without seeking any new employment, he might have demanded his wages during the whole term, it would be no less inconsistent with expediency than with justice, should the consequence of his following a more industrious line of conduct be favourable, not to him, but to his former employer only. *Voet. ad Dig. lib. 19. tit. 22. § 27.*

The LORD ORDINARY found "Puncheon entitled to his full salaries."

But after advising a reclaiming petition, with answers,

The Court being of opinion, That in cases of this kind, the claim of a servant was for damages only.

THE LORDS "altered the interlocutor of the Lord Ordinary, and remitted the cause to his Lordship," for the purpose of adjusting the extent of Puncheon's claim.

Ordinary, *Lord Justice-Clerk.* Act. *Wylde.* Alt. *Maconochie.* Clerk, *Menzies.*

G.

*Fol. Dic. v. 4. p. 233. Fac. Col. No 148. p. 297.*

### SECT. XIII.

Expenses when given as Damage, not restricted.

1741. July 28. DAVIDSON *against* Ross and Others.

A COMPLAINT at the instance of Ross of Pulrossie, and the other Creditors of Easterfearn against John Davidson, having been found groundless and mali-

No 84.

cious, and the complainers liable in Mr Davidson's expenses, it was objected to the account of expenses, that fees were stated to no less than six lawyers, which was not only contrary to the regulations, but in itself unreasonable.

But as the regulations are now little regarded in any case, and indeed no at all in such a case as this, where the expenses were given as damages, so, in this case, Mr Davsdson's reputation having been much concerned, it was thought allowable to employ more lawyers than in a common case may have been needful; and upon his deponing before the Ordinary, that he really gave the fees as stated, "The same were sustained, and the objection repelled."

*Kilkerran, (EXPENSES.) No 1. p. 180.*

Damage arising from the abuse of property. See PROPERTY.

Command of a superior, whether it excuses from reparation. See BONA ET MALA FIDES.

See DAMAGE and INTEREST.

See DELINQUENCY.

See APPENDIX.