

No 384.
Action of damages for a verbal injury, found competent before the Bailies of Edinburgh.

1750. June 19.

HAMILTON *against* ARBUTHNOT.

HUGH HAMILTON merchant in Edinburgh, having brought a complaint before the Bailies of Edinburgh against Robert Arbuthnot merchant there, for having spread a report among ladies and others, that the goods in his shop, whereof he had advertised a sale, were a bite, that they were rotten and mildewed trash, and that it would be found so, the Bailies 'allowed a proof;' and on advising thereof, 'Found the complaint proven, and decerned Arbuthnot in L. 40 Sterling of damage.'

Arbuthnot presented a bill of suspension, wherein he objected *first*, to the competency of the Court to judge in questions of scandal; *2dly*, To the extent of the sum decerned, as extravagant, when the complainer could qualify no damage.

THE LORDS, on report, 'remitted to the Ordinary to refuse the bill.'

Though the Commissaries are the only competent Judges in matters of scandal, process of verbal injuries lies before the ordinary Judges; nor in cases of this kind can there be a strict calculation of the damage actually sustained; and as the Bailies of Edinburgh are all merchants, there could be no fitter persons to judge of the extent of the damage, and a great part of the sum must have been expended in the process. See REPARATION.

Fol. Dic. v. 3. p. 362. Kilkerran, (REPARATION.) No 7. p. 491.

1752. June 13.

RICHAN, Petitioner.

No 385.

ROBERT RICHAN, pursuer of a sale of the lands of Rapnes in Orkney, applied by petition, craving a warrant to the Magistrates of Kirkwall, at whose sight the common debtor's repositories had been sealed up, to allow the petitioner inspection thereof presently under their seals, and to take thereof an inventory and receipt for all discharges and receipts of debts, or other writings, that might be material for instructing the points in the petition mentioned.

THE LORDS 'granted the desire of the petition;' but, as they thought the Magistrates were not the proper persons to have sealed up the repositories, they conjoined the Sheriff-depute in the warrant, and appointed him, when the repositories should be again sealed up, to put his seal thereon.

Kilkerran, (DEFUNCT'S WRITS.) No 1. p. 155.

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It belongs to the Magistrates to

1762. December 10. TAILORS of Edinburgh *against* Their JOURNEYMEN.

THE spirit of mutiny showed itself some time ago among the workmen in the city of London, and came to such a height as to require the aid of the legisla

ture. The same spirit broke out afterward among the journeymen-tailors of Edinburgh, who erected themselves into a club or society, keeping in particular a list of the journeymen out of service, under pretext of accommodating the masters more easily with workmen, but in reality to enable themselves to get new masters, if they differed with those they served. When any of them deserted their service, they entered their names in that list, and were immediately again employed, as other masters were under a necessity to take them or to give up their business. The master-tailors suffered many inconveniencies from this combination, which among other hardships produced encrease of wages from time to time. The journeymen had always breakfasted in their master's houses to save time; but upon a concert among them, they all of them deserted their work about nine in the morning, declaring their resolution to have the hour betwixt nine and ten to themselves in all time coming. The desertion was the more distressing, as it was made when the preparing some clothing for the army required the utmost dispatch. This occasioned a complaint to the Bailies of Edinburgh, who found, "that the defenders and other journeymen tailors of Edinburgh are not entitled to an hour of recess for breakfast; that the wages of a journeyman-tailor in the said city ought not to exceed one shilling *per* day; and that if any journeyman-tailor not retained or employed, shall refuse to work when required by a master on the foresaid terms, unless for some sufficient cause to be allowed by the Magistrates, the offender shall, upon conviction, be punished in terms of law."

This cause being brought to the Court of Session by advocacy, it was thought of sufficient importance for a hearing in presence; and the result was to approve the regulations of the Magistrates.

The only difficulty was, whether the foresaid regulations did not encroach upon the liberty of the subject. It was admitted, that they did in some measure; but then the Court was satisfied of their necessity from the following considerations. Arts and manufactures are of two kinds. Those for luxury and for amusement are subject to no rules, because a society may subsist comfortably without them. But those which are necessary to the well being of society must be subjected to rules, otherwise it may be in the power of a few individuals to do much mischief. If the bakers should refuse to make bread, or the brewers to make ale, or the coalliers to provide coals, without being subjected to any controul, they would be masters of the lives of the inhabitants. To remedy such an evil, there must be a power placed somewhere; and accordingly this power has been long exercised by Magistrates of burghs and Justices of Peace, under review of the sovereign court. The tailors by forbearing to work cannot do mischief so suddenly; but people must be clad, and if there be no remedy against the obstinacy of the tailors, they may compel people to submit to the most exorbitant terms.

Another point debated, was the propriety of the foregoing regulations. Upon which it was observed, that the regulation of the wages is even admitted by

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the defenders themselves to be proper, because they have acquiesced in it, without complaint. And yet if this article be admitted, the other regulations follow of necessary consequence; for it is to no purpose to fix wages, without also fixing the number of working hours; and it is to no purpose to fix either, if the defenders have the privilege to work or not at their pleasure. Their demand of a recess between nine and ten, which they chiefly insist for, is extremely inconvenient because of the time it consumes, especially in a wet day, when they must shift and dry themselves to avoid sullyng the new work they have on hand. And as for health, they will never be denied by either their masters, or by the Judge, a whole day at times for exercise.

Fol. Dic. v. 3. p. 362. Sel. Dec. No 202. p. 262.

* * * See Tailors of Edinburgh against White, No 375: p. 7607, Div. 14. *h. t.*

1764. February 7.

WILLIAM DEAS, Residenter in Edinburgh, and MARGARET WANN, his Spouse
against The PROCURATOR-FISCAL.

No 387.

The Magistrates of a royal burgh may inflict punishment on persons who are proved to keep disorderly houses, tho' no particular acts of obscenity are condescended upon, and though the ordinary forms requisite in criminal prosecutions are not observed.

THE suspenders, on the 19th of September 1764, had a criminal libel executed against them, at the instance of the Procurator-fiscal of the city of Edinburgh, setting forth, in general terms, that they had kept an irregular and disorderly house for a twelve-month past: That they received women of bad fame and profligate manners: That the people in the neighbourhood were frequently molested with the noise of oaths, profane and abandoned language, of scuffles, scolding, and tumultuous rioting at improper hours. All, or any part of which being proved, the defenders ought to be banished the city of Edinburgh, and punished otherwise as accords.

This libel being sent to proof, the Magistrates, on the 15th of December pronounced an interlocutor, finding the complaint proven, and banishing them from the liberties of the city of Edinburgh.

A bill of suspension was presented, against this interlocutor, to the Court of Session, in which it was *pleaded*, That the sentence of the Magistrates was irregular, illegal, and oppressive: That the libel was conceived in too vague and indefinite terms: That no such particular acts of indecency or obscenity were condescended upon, as could subject them to so severe punishment: That no time was allowed them to prepare for the defence, but they were summarily cited to appear in 24 hours: That no list of the witnesses to be adduced against them, as is common in prosecutions of this kind, was presented with the libel: That, in criminal matters of such high importance, where the loss of life and liberty is in hazard, every subject is entitled to have his cause tried by a jury of his countrymen; and that a list of the persons to pass upon the assize should