No 386.

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 sullying 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 tumultous 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

also have been given them. However, both of these were neglected in this case; they got no information about the witnesses who were to give evidence against them, and so could have no opportunity of objecting to their examination; and, in place of a fair trial by a jury, they were deprived of their liberty of citizens by a common sentence of the magistrates. It was also *contended*, That the sentence ought to be repealed, as the complaint had been sent to proof before any answer was made to it, and before any judgement upon the relevancy. No 387.

That the Magistrates had been equally precipitate in carrying the sentence into execution, as they had before been unjust to the defenders in denying them time to prepare for their defence: That, in the latter case, the interval of eight days, was most commonly allowed; and, in the former, the legal *inducia* of fifteen days were seldom refused.

'THE COURT refused the bill, and adhered to the Magistrates' interlocutors.

Act. *John Swinton* Junior.

A. C. *Fac. Col. No* 133. *p.* 312.

1771. *June* 13. DAVID GRAY *against* ROBERT REID.

No 388.
A burgh of barony (Kilmarnock) was found to be independent of the Baron.

KILMARNOCK was erected into a burgh of barony in the year 1591, by a charter under the Great Seal, which was soon after ratified by an act of Parliament. In 1690 and in 1700, the Earl of Kilmarnock, the superior, made a new grant to the burgh; by which the corporation was established to consist of two Bailies, nineteen Councillors, and other officers; 'with power to the 'said Bailies to hold and affix Courts within the said town, and to decide, determine, and cognosce, in all actions and causes, both civil and criminal; 'and, generally, with power to the said Bailies, &c. to act, in every affair 'relative to the said town, as freely in all respects as any other Bailies, &c. 'of any other free burgh within this kingdom are known to do, have done 'heretofore, or, by the laws of this kingdom, may do at any time coming.'

By the charters of erection and set of this burgh, it was appointed, that the Town Council present a leet of five of their own number to the Baron, on certain fixed days, preceding or following Michaelmas yearly; out of this leet the Baron elects two Bailies; and, if the Baron does not elect the two Bailies within the time limited, and in the manner established by the charters, then the Town Council have power to choose two Bailies for that year only.

The jurisdiction of this burgh fell under investigation and trial, in consequence of an action raised by Gray against Reid, for a debt of L. 5 Sterling; when, in a suspension of a decree for that sum, Reid stated an objection to the Bailies' jurisdiction, in respect the debt was above forty shillings, the limitation authorised by the jurisdiction act, 20th Geo. II. c. 43.