

No. 6. The Court were of opinion that Sheriffs were possessed of no such jurisdiction. It was observed that the power of regulating wages is committed to Justices of the Peace on liberal and constitutional ideas. The Sheriffs are properly officers of the Crown, but Justices of the Peace and Magistrates of Burghs are more popular, more connected with, and supposed to be more kindly towards the inhabitants. It was also observed, that the acts of council had the effect of regulating the wages of journeymen only when employed for the usual hours. Extraordinary work was entitled to extraordinary payment. To give this power of regulating wages to incorporations, it was further observed, would be more dangerous than even giving it to the Sheriff.

The Court (6th August 1777), Found that the Sheriff had no jurisdiction.

Lord Ordinary, *Kennet.*

For the Suspenders, *Rolland.*

Alt. *W. Erskine.*

*J. W.*

\* \* By an after decision, Master Taylors of Edinburgh against Journeymen Taylors, No. 337. p. 7623. 28th July 1778, the Court found that Justices of the Peace had sufficient authority to make regulations fixing the wages of mechanics.

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1799. November 12.

The LORDS of the TREASURY and his MAJESTY'S ADVOCATE, against ADMIRAL KEITH STEWART'S TRUSTEES, and Others.

No. 7.

Decree of constitution, for the purpose of being the foundation of adjudication, pronounced, reserving all objections *contra executionem*, in an action at the instance of the Lords of the Treasury, against the representatives and cautioners of a receiver-general, although the pursuers were insisting in the Court of Exchequer,

THE Lords Commissioners of the Treasury, with his Majesty's Advocate as their attorney, raised an action before the Court of Session, against the trustees, the eldest son, and the cautioners of Admiral Keith Stewart, for the balance alleged to be due by the deceased as receiver-general of the land-tax, &c.

In the progress of the action, the pursuers stated its object to be merely to obtain a decree of constitution, upon which adjudication might be raised against Admiral Stewart's landed property in Scotland.

The defences were, *1mo*, That by 6th Anne, C. 26. § 5, 6, 7, a debt due to the Crown can be sued for only in Exchequer; *2do*, That the pursuers had raised and were insisting in a previous action against the defenders in Exchequer, which made the present action incompetent, on the ground of *lis alibi pendens*.

“ The Lord Ordinary found, That, by the law of Scotland, and also by the act of the 6th of Queen Anne, C. 26. this Court is alone competent to the trial of any question concerning, or claims brought against, the heritable estate of a debtor to the Crown; and, in respect the pursuers' counsel have limited the conclusions of their action to a decree of constitution, in order to found an adjudication of their debtor's heritable estate, and that the defenders have not shewn that they have yet paid, or accounted for the sums claimed by the pursuers, decerned against them conjunctly and severally, for the

“sums, principal and interest, conform to the conclusions in the second alternative of the libel; reserving all objections *contra executionem*.”

The defenders, in a reclaiming petition, pleaded, 1<sup>mo</sup>, The use to be made of a decree, when obtained, cannot confer a jurisdiction otherwise incompetent. A declarator of marriage or divorce, or a question strictly maritime, could not be brought before the Court of Session, in the first instance, although it were the sole object of the decree to obtain such diligence as can proceed from this Court alone. Upon the same principle, the present action is incompetent. By 6th Anne, C. 26. § 6, 7. debts due to the Crown can be sued for only in Exchequer; and as the forms and rules of the law of England, which are not presumed to be known in the Court of Session, prevail in Exchequer, there is more reason for excluding action on them here, than in the other supposed cases.

It is true, that by sect. 8. of the statute, debts due to the Crown can be made effectual against landed property, only according to the law of Scotland; but this is not inconsistent with the former; and, when the pursuers have constituted their debt in Exchequer, the petitioners will not dispute, that an adjudication for it will be competent only in this Court.

2<sup>do</sup>, At all events, the present action is precluded by the previous claim in Exchequer; 16th January 1751, Bisset and Edwards against Grosset, No. 78. p. 7341.

Nor does the reservation of objections *contra executionem* remove the defences. Decrees with such reservations, are granted only in second adjudications where there is danger from delay, and presuppose the competency of the Court to constitute the debt. They are never granted in first adjudications; because there the debtor is entitled to insist for a special adjudication, setting aside lands sufficient to answer the debt, with one-fifth more, which can only be done when its precise amount is previously ascertained in a competent action. And as no adjudication has been taken against Admiral Stewart's estate, if the pursuers were to attempt one, this mode would be adopted by his trustees.

At advising the petition, an opinion was given in favour of the competency of the action; but the petition was refused without answers, on the ground that the interlocutor reserved all objections, and that there was no harm in allowing the decree to go out *valent quantum*.

Lord Ordinary, *Armadales*. For the Petitioner, *Jos. Clerk*. Clerk, *Mennies*.

D. D.

*Fac. Coll. No. 41. h. 316.*

1800. July 9. ARMSTRONG and SON, and Others, against THOMAS MOFFAT and Others.

THE society of Fleshers at Dalketh, have, for time immemorial, been accustomed, in October annually, to make a contract with the candlemakers established

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in a previous action against them for the same debt.

No. 8.

A Baron-Bailie has power to