

1744. December 11. HERDMAN *against* YOUNG.

WILLIAM HERDMAN, merchant in Stonehyve, in name, and by commission of some of the inhabitants and feuars there, raised a declarator of several immunities and privileges alleged due to the place, against the York-Buildings Company their superiors; and into this summons, he threw a conclusion, narrating several acts of injustice and oppression as committed by John Young of Stank, in his capacity of town-clerk, and of sheriff-substitute of the shire of Kincardine, and clerk to the Sheriff and Justice of Peace Courts. Mr Young complained of these articles, as injurious to him, and inserted in the summons by Mr Herdman, without any warrant, although, after raising the process, he had obtained from two of the feuars of Stonehyve, a commission to prosecute Mr Young, and another from certain weavers and brewers in the county, to pursue him for injuries to the weavers and brewers in general.

The articles complained of were, That he had extorted a sum of money from Alexander Straiton, stamp-master in Stonehyve; That being clerk to the Justices of Peace, he had obtained his own servant to be named procurator-fiscal, and had caused him to summon the whole weavers and brewers in the county, from whom he had taken half-a-crown, or some such sum, to redeem them from process; That being sheriff-substitute, he had instigated processes, which he himself managed as procurator, and determined as judge;—and it was noticed, as an aggravation of the calumny, that the libel was printed, and dispersed in the country.

THE LORDS thought the inhabitants of the county could only pursue, each for his own injury; and they also thought the whole articles improper to be inserted in a declarator of the town's right.

They found the articles complained of were incompetent, injurious, and defamatory to John Young; and therefore ordained the same to be deleted and expunged out of the libel; and fined and amerced Herdman the pursuer in the sum of L. 10 Sterling for the use of the poor; and found him liable to the defender John Young in the whole expenses of process hitherto incurred.

Reporter, *Lord Elchies.* For the Complainer, *Burnet.* Alt. *Lockhart.* Clerk, *Justice.*

D. Falconer, v. 1. p. 23.

No 78.

Articles of complaint insisted on against a person, without warrant from those whose names were used as complainers, and improperly thrown into a summons raised in their names for another purpose, for which they had given warrant, were found injurious.

1748. July 15. CAMPBELL *against* BARRY.

No 79.

ONE having sold a certain number of cows to another, and got his bill for the price, they were allowed to remain a few days in the seller's inclosures; mean-

No 79. time, his servant assisted the rebels to carry them off. THE LORDS found the seller not liable.

D. Falconer.

* * * This case is No 6. p. 10071, *voce* PERICULUM.

1758. July 11.

MASON *against* ADAMS.

No 80.
How far the
proprietor of
a ship is liable
for the in-put
master.

JOHN ADAMS being employed as his Majesty's master mason in the works of Fort George, and having occasion to bring by water carriage to the fort, from different places in the Murray-frith, quantities of stone, lime, and timber, he caused build at Leith an open boat of a particular make fit for that purpose; and, by a mutual contract, *anno* 1751, engaged John Wilson "to navigate the said vessel to and from the quarries of Cromarty and Monlochie to the port of Ardersier, or to any other place Mr Adams shall direct, paying him certain sums for each voyage; and the said John Wilson bound himself to obey the orders and directions that should be given him by Mr Adams."

Gilbert Mason, merchant in Leith, brought an action before the high Court of Admiralty, against John Adams, as owner of the said vessel, and against John Wilson, in-put master, founded on a bill of lading, dated 21st September 1756, subscribed by the said John Wilson, acknowledging to have received on board said vessel at Thurso, for behoof of the pursuer, deliverable at Inverness, 326 bolls oatmeal; subsuming, That when the meal was delivered at Inverness, there was a short-coming of 27 bolls, value L. 17 Sterling; and therefore, concluding, That the defenders should be decerned conjunctly and severally, &c.

The following defence was made for Mr Adams, That Mr Wilson was employed by him for carrying stone, lime, &c. to the fort at Ardersier, and that if Wilson, without his authority, ventured to employ the ship for any other purpose, such breach of duty could not bind Mr Adams. The Judge-Admiral found Mr Adams liable. But a bill of suspension was past upon the following reasons; *1mo*, The proprietor, in whatever branch of commerce he employs his ship, is understood to give the master put in by him all the trust that is necessary for carrying on that branch; and particularly, to make contracts of afreightment, &c. which must bind the owner; *2do*, As the owner is bound to fulfil such bargains, so he is liable for those he employs; But, *3tio*, If the the master make a bargain without authority, the owner is not liable to fulfil, nor consequently for the negligence or fraud of the master: The last supposition is the present case. It appears, by the contract betwixt Mr Adams and Wilson, that the boat was destined for a certain purpose, and that the master's power was limited to that purpose. Therefore, if the pursuer insist that the master had a commission to make profit by freighting the ship at large, it is