

subservient to a Scots fishing, and as it in that light falls to be considered as a pendicle of a subject locally situated in Scotland, the pursuer holds it to be perfectly clear, that the demolition of this cauld, which only becomes a wrong on account of a hurt and damage being thereby done to a subject locally situated in Scotland, must be cognizable before the courts of law in Scotland.

Observed on the Bench; The single question is, Whether this trespass was committed in Scotland or England? In Tankerville's case, the river was promiscuously possessed; there, the middle of the river was properly fixed as the boundary. But this river is not always the boundary between the two kingdoms. Here, no promiscuous possession; the island, English ground, but the river possessed by the Scotsman; and, therefore, for holding the trespass committed on Scots ground.

THE LORDS repelled the objection to the jurisdiction of this Court.

Reporter, *Kennet*.

Act. *M^cQueen*.

Alt. *Crosbie*.

Clerk, *Ross*.

Fol. Dic. v. 3. p. 345. Fac. Col. No 159. p. 32.

1775. December 16.

JOHN MAXWELL, Procurator-fiscal of the barony of Gorbals, *against* JAMES M^cARTHUR Smith in Gorbals, and JEAN STEVENSON his Wife.

JOHN MAXWELL, procurator-fiscal of the barony and justiciary court of Gorbals, instituted, before the bailie of Gorbals, a criminal libel against James M^cArthur, and Jean Stevenson his wife, which sets forth, that the keeping of a common stew or bawdy-house, and the harbouring or entertaining promiscuous companies of men and women of bad characters, commonly habit and reputed whores, for the purpose of lewdness and debauchery, cursing and swearing, and making a great noise, and by whom the neighbourhood are greatly alarmed, and the peace broke, and that at unseasonable hours, and by night as well as by day, and on Sabbath-days as well as other days; especially when such crimes are committed by persons convicted of the like crimes before, are all crimes of a very heinous nature, by law strictly prohibited and discharged, and the committers thereof severely punishable. The minor proposition subsumes in terms, but without charging that the defenders had been formerly convicted; and the conclusion is, that the defenders should be fined to the pursuer, and decerned to be imprisoned till payment, thereafter publicly punished in their persons, banished from the village of Gorbals, and liberties thereof, during their natural lifetime, and otherwise punished in terms of law, in terror of others to commit the like crimes in time coming.

The bailie afterward pronounced sentence in the following terms: ' Having considered the defence given in for the defenders, after the interlocutor on the relevancy, and during the course of the examination of the witnesses, together

The Lords sustained their own jurisdiction in reviewing a sentence of the bailie of Gorbals of Glasgow, on a criminal libel, viz. the keeping a disorderly house, for which the bailie had decreed banishment for life from the barony.

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This sentence having been carried into execution by imprisonment, a bill of suspension and liberation was presented ; and it was contended, in the *first* place, That the complainers stand incarcerated by virtue of a sentence pronounced against them by an incompetent judge. The jurisdiction the magistrates of Gorbals pretend to, is that of barony and justiciary. It is contended, however, that the jurisdiction of barony stands now restricted by the statute 20th of his late Majesty, ch. 43 commonly called the jurisdiction act, within very narrow limits as to criminal cases, viz. a fine not exceeding 20s. or setting the delinquent in the stocks, not exceeding three hours, in the day-time, and the fine to be levied by distress first, and failing distress by imprisonment ; and that jurisdictions of justiciary are by that act totally taken away. The exception in that act, founded on by the charger, only applies to such jurisdiction as belongs to boroughs by their charters of erection ; but it does not extend to those jurisdictions or privileges which may have been acquired by progress from individuals.

But, *separatim*, supposing the Magistrates of Gorbals to be vested in such a jurisdiction as they claim, still they would be bound by law to exercise it according to the known and legal forms. If they have a right of justiciary, they cannot exercise justiciary powers, without attending to justiciary forms. They cannot hang, inflict corporal punishments, or banish, without regular proceedings, juries, and forms of trials ; nor can they, as barons, exercise any jurisdiction of that kind, without allowing the regular *induciæ*, serving a libel, and the like.

But, in the present case, every form of trial has been violated ; the defenders were called into Court without having a libel served on them ; no *induciæ* were allowed them to prepare for their defence ; they were not informed of the names or designations of the witnesses that were to be adduced against them, so as to be prepared to propone and prove relevant objections ; and even those witnesses were brought without the aid of any legal compulsion, so that one and all of them were *inhabile*, as being ultroneous.

Answered, with respect to the jurisdiction of the Court ; It is well known, that the village of Gorbals makes a considerable part of the suburbs of Glasgow, and though not within the royalty of that city, is intimately connected with it, not only as being held of the magistrates and community of Glasgow, but as a

very populous district, in which numbers of work people and manufacturers belonging to the city of Glasgow have their residence; and the inhabitants of it being generally people of middling or inferior stations, it is even more essential to the quiet of the city of Glasgow, and neighbourhood thereof, as well as to the village of Gorbals itself, that the people there should be under the jurisdiction and controul of a magistrate, than that there should be a magistracy in the city of Glasgow; and it would be most unhappy indeed if the dispute with these defenders should have the effect to abolish the jurisdiction of the Bailie of the Gorbals, and to reduce that place to a state of anarchy, without any magistracy, without police, and without any power of controul over the inhabitants; which is the evident tendency of the plea now maintained.

The fact is, that the barony of Gorbals, with the office of bailiary and justiciary within the bounds of that barony, appears to have been acquired by the community of Glasgow from a family of the name of Douglas of Blackerston; and the charters in favour of the town, subsequent to this acquisition, were ratified in Parliament; particularly, there is an act of the Parliament of Scotland in 1661, which confirms to the Magistrates of Glasgow 'all and hail the six pound land of old extent of Gorbals and Bridge-end, with the heritable office of bailiary and justiciary within the said bounds.'

In consequence of these rights, the Magistrates of Glasgow have immemorially been in use to elect a Bailie of the Gorbals every year; and, in no instance except the present, has his jurisdiction ever been disputed. It is unnecessary here to inquire into the extent of his jurisdiction, or how far the powers of justiciary go; for surely, if he has any jurisdiction at all, it must enable him to preserve good order, and to prevent public nuisances within his bounds. It must entitle him to proceed against disorderly persons by imprisonment, banishing them from the place, or such other slighter punishment, as is usual in such cases, and as is daily practised by the Magistrates of burghs.

The jurisdiction act contains a special clause, declaring, 'That nothing therein contained shall extend, or be construed to extend, to take away, extinguish, or prejudice any jurisdiction or privilege by law vested in, or competent to, the corporation or community of any royal borough in Scotland; and that all such jurisdictions, privileges, or immunities, as are by law vested in, or competent to such royal boroughs, or any of them, whether within or without the royalty of such boroughs respectively, are, and shall be saved and reserved entire to them, or any of them, in such and the same manner, to all intents and purposes, as if this act had not been made.' As to the distinction attempted to be made on the other side, the charger can by no means agree to it. The right of this jurisdiction was vested in the Magistrates and community of Glasgow, long prior to the jurisdiction act; and this right was even established in them by the authority of Parliament, as already said; the office of bailiary and justiciary within the said bounds of Gorbals and Bridge-end being confirmed to them by the act in 1661.

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It could never be the intention of the act 20th of his late Majesty, to abolish a jurisdiction of this kind belonging to a royal borough, and so necessary for preserving the public peace within the suburbs of that borough; on the contrary, the act does carefully preserve such jurisdictions and privileges, &c. by law vested in, or competent to such royal boroughs, whether within or without the royalty of such boroughs, without any distinction in what manner the right was originally acquired, or became vested.

Lastly, The supposed informalities in the procedure, if this Court could take cognisance of them, would evidently appear to be of no importance. The Bailie has proceeded in this case as the Magistrates of boroughs do in every case of the same nature; and no town in Scotland would be inhabitable, if such offence could not be inquired into in a summary manner.

All the Judges agreed, that the Magistrates of Gorbals had jurisdiction in this case, but some of them doubted, if the cause came properly before this Court, as it related to imprisonment for a crime; and, the question being put, it carried, that the bill of suspension was competent; and next, on another question put, it carried to refuse the bill.

Act. *Ilay Campbell.*Alt. *Geo. Wallace, Crosbie.*Clerk, *Tait.**Fol. Dic. v. 3. p. 345. Fac. Col. No 208. p. 154.*

No 98.

1776. August 10. DUKE OF GORDON *against* SIR JAMES GRANT.

THE COURT enacted penalties to enforce the statutable regulations respecting salmon fishing. See APPENDIX.

*Fol. Dic. v. 3. p. 343.**** See *Carnegie against Scot*, No 84. p. 7352.

No 99.

1778. July 28. CHALMERS *against* NAPIER.

ACTION brought for recovery of an indented apprentice to serve at sea, who had been illegally impressed, is not a cause strictly maritime, so as to exclude advocacy to the Court of Session.

*Fol. Dic. v. 3. p. 344.**** This case is No 11. p. 594. *voce* APPRENTICE.