

the other side in the previous proceedings, and which has occasioned this case to be reported. It had been maintained, that it was entirely incompetent to pursue an action of this kind before the Court of Session, as whatever right was now claimed by the pursuer of the declarator must be founded solely on the statutes establishing the general privileges in question; but as actions upon these statutes are declared to be competent by bill, plaint, or information in any of his Majesty's Courts of Record at Westminster, or of the Court of Exchequer in Scotland, it must be incompetent to sue upon them in any other Court.

The answer to this was, that the clause directing the competent courts regards only actions for recovery of the penalties—whereas the action at issue was of a nature entirely different. It was a declarator of right, and a claim of damages, which must be competent to the Court of Session. If the action had been for the penalties, of which one half falls to the share of the Crown, it would have been competent only before the Court of Exchequer.

The Court sustained the competency, and found damages and expenses due.

Lord Ordinary, *Kennet*.

For Mowat, *A. Tyler*.

For Bruce Stewart, *R. M^cQueen*.

W. M. M.

1777. March 11.

WILLIAM HALL of Whitehall, *against* ROBERTSON of Ladykirk.

THE act of Parliament 1661. Cap. 41. contains this clause: "For the further encouragement of the said heritors, wadsetters, and liferenters, to go about the ready observance of the said act, liberty and power is granted to them, at the sight of the Sheriffs, Stewarts, Lords of Royalty, Barons, and Justices of Peace, in their respective bounds, to cast about the high ways to their conveniency, providing they do not remove them above 200 ells upon their whole ground."

Mr. Robertson made applications to the Justices of the district of Berwickshire in which his estate is situate, proposing to alter a part of the high road.

A Committee, who were appointed to visit the place, reported, that by the proposed alteration, the road would be turned 298 ells, into a tract unfavourable to the public, on account of being overshadowed with trees on one side. Consequently at a general meeting of the Justices, (30th April 1774), Mr. Robertson's petition was refused.

The Justices of Berwickshire had sometime before issued certain regulations, one of which was, that, 'notice of all private applications for turning 'high-ways on account of inclosing, shall be given at the parish church 'on Sunday between sermons, and at one or other of the said two general 'meetings previous to such application being made.'

No. 4.

No. 5.

A Committee of Justices had reported that a proposed alteration on a road was within the statutable limits of 200 ells. Offered in a suspension that the distance was 215 ells. Refused as irrelevant.

No. 5.

By another regulation, the Quarter Sessions, on first Tuesday of March and first Tuesday of August, were always to be adjourned till the last Tuesday of each of these months.

Mr. Robertson, without complying with the regulation concerning notices, brought together a meeting of the Quarter Sessions, on the first Tuesday of August, which ought to have been adjourned without doing any business, until the last Tuesday of that month. He laid before this meeting a new petition, with a plan for turning the road as originally proposed, with a slight variation, by which it was alleged the turn was reduced to 194 ells.

The Justices appointed a Committee of their number to visit and inspect the road. This Committee met three days after. The proceedings which had followed upon the former application were not laid before them. They made a report approving of the alteration, mentioning that it would be for the benefit of the public, as the road would be carried "on a dry firm bottom, more easily made and kept in repair."

The Quarter Sessions, which met on the last Tuesday of August, declared by minute that the proceedings in the one which had met on the first Tuesday, were irregular and contrary to the resolutions of the Trustees regarding adjournments, before mentioned. However, the next Quarter Sessions, which met upon 24th October 1779, approved, after considerable opposition, of the report of the Committee which had considered the alteration of the road proposed by Mr. Robertson to be beneficial to the public, and within the limits of 200 ells.

Mr. Hall presented a bill of suspension, which was passed. He gave in a condescence of facts, which he offered to prove, particularly that the turn of the road would amount still to *more than 215 ells*.

The Lord Justice Clerk took the cause to report, and ordered memorials.

It was argued for Mr. Robertson, that the opposition to his schemes of obvious improvement was founded in malice,—and that the proposed turn did not exceed the distance allowed by act of Parliament, or at least, *that any little excess was trifling*; the road would be upon the whole better, and *de minimis non curat prætor*.

Mr. Hall argued thus: The turn certainly did amount to the length of 215 ells, of which he offered the most distinct proof. The Justices had *no power* by statute, or by common law, to go one inch beyond the permission of the act of Parliament in turning a public highway. A high road is *publici juris*, which, belonging to no individual, cannot be encroached upon, taken away, or altered in any shape, except by the specific authority of a statute,—and Justices of Peace, exceeding the statutable regulations, commit an illegal act, as much as if they were to pull down a church, over which they have no jurisdiction. When roads are impracticable, the Justices have certain powers committed to them by the act 1669. When an heritor means to inclose, they have certain powers by the act 1661; but those are limited in the most express manner. It would be illegal to turn a road 201 ells.

The Court pronounced the following interlocutor, (26th February 1777):
 "The Lords having resumed the consideration of this cause, the mutual memorial given in, and condescendence and answers *hinc inde*, they find the condescendence not relevant, and therefore find the letters orderly proceeded, and decern, and find expenses due to the charger."

No. 5.

A petition against this judgment was (11th March 1777) refused without answers.

Lord Ordinary, Justice-Clerk.

For Hall, *Hay Campbell*.

W. M. M.

1777. August 6.

INCORPORATION OF TAYLORS in Edinburgh, Canongate, and Potterrow,
 against JAMES WHITE, and Others.

AN action was brought against the defenders, in name of the Deacon and Boxmaster of the Corporation of Taylors, for allowing their journeymen wages beyond the regulations established by an act of the Burgh of Edinburgh. The Sheriff, before whom this action came, decerned against the defenders for the sum of £2 Sterling each. Of this judgment, they brought a bill of suspension, which coming to be discussed before Lord Kennet, his Lordship "re-
 pelled the reasons of suspension, found the letters orderly proceeded, and decerned."

No. 6.

Sheriff has no power as a Police-officer to establish general regulations as to the wages of tradesmen.

See No. 375.
 p. 7670.

The suspenders contended, in a reclaiming petition, that the regulations themselves, which they were said to have transgressed, were altogether inexpedient; and that though never so expedient, the expediency could not supply a radical defect of authority. To establish regulations concerning the rate of wages, belongs to no judge or magistrate in this country at common law. A special statute is absolutely necessary. Acts of Parliament have accordingly, at different times, been made, vesting that power in such hands, and to be exercised in such manner, as the Legislature thought either necessary or expedient. Thus the act 1426, Cap. 78. confers a jurisdiction of this nature upon the "Aldermen and Council of ilk Town, sworn;" and the act 1617, Cap. 8. § 14. gives a jurisdiction of a somewhat similar kind to Justices of the Peace at their Quarter Sessions. These are the only Scots acts of Parliament which regard this matter, and no Judge or Magistrate has power to make such regulations as those in question, except in terms of these statutes. The law in England seems to be precisely in the same situation with ours. By several English statutes powers of this kind are committed to Justices of the Peace; and British statutes, such as 7th Geo. I. St. 1. Cap. 13. and 8th Geo. III. Cap. 17. have from time to time been made to enlarge these powers where they seem deficient. All these acts clearly imply, that in common law no