

tained or repelled as it saw cause; and, if the defenders thought themselves aggrieved, they had a remedy in the ordinary course of law, by an appeal to the House of Lords.

But, *separatim*, the competency of the pursuer's action was put out of all doubt, by that part of his libel which alleged, that the defenders had broke open and entered his mill, not really from a suspicion or information that smuggled goods were concealed in it, but with an intention to discover the secret of the machinery.

The petitioner therefore prayed their Lordships to take the premises into their consideration, and to grant him such relief as to them should seem proper.

When this petition was moved, his Majesty's Advocate agreed to withdraw the motion in Exchequer; upon which the Court superseded advising the petition till that was done, and then pronounced an interlocutor finding the petition competent, and bearing the discharge of the motion.

*Pet. M'Laurin. Crosby.*

*J. M.*

*Fol. Dic. v. 3. p. 345. Fac. Col. No 25. p. 41.*

1766. November 26. ALEXANDER GRANT *against* Captain SUTHERLAND.

UPON a complaint, that Lieutenant Forbes of the Earl of Sutherland's regiment, had charged Captain Gordon with L. 6 : 9 : 4, as disbursed to recruits, but which appearing not to have been paid, was again paid to the recruits themselves by Captain Gordon, a regimental court-martial gave it as their opinion, that Lieutenant Forbes was due that sum to Captain Gordon, and that the commanding officer should be pleased to order it to be paid.

The Lieutenant-Colonel, as the commanding officer of the regiment for the time, issued a warrant to Captain Sutherland, the paymaster, to pay the sum to Captain Gordon, and state it to accompt of Lieutenant Forbes's subsistence-money.

Lieutenant Forbes brought an action for payment of his subsistence-money, in which the question was, how far the above sentence and warrant were effectual in law.

*Pleaded* for the defender, The acts for preventing mutiny and desertion provide, "That, if any paymaster wilfully detain or withhold; by the space of one month, the pay of any officer or soldier, then, upon proof thereof, before a court-martial," he shall be discharged, and forfeit L. 100 Sterling. They likewise provide, "That, if any inferior officer or soldier shall think himself wronged by his captain or other officer commanding the troop or company to which he belongs, he is to complain thereof to the commanding-officer of the regiment, who is hereby ordered to summon a regimental court-martial for doing justice to the complainant."

No 91.

No 92.

A regimental court-martial ordered retention of part of an officer's subsistence money. In an action at the instance of the officer against the paymaster of the regiment for payment of the sums retained, the court repelled the defence, that a civil court has no jurisdiction in matters of this kind.

No 92.

By these and other clauses of the mutiny acts, a much greater power is given to courts-martial, in matters respecting the pay of officers, than what was here assumed. And, in practice, matters of this kind have usually been adjusted in that manner.

*Answered,* The powers of courts-martial, unknown to the common law, and introduced by the mutiny acts, for the preservation of military discipline, can never be carried farther than those acts have gone. But there is no clause in any of them, which bestows a jurisdiction in matters of property or civil right. Courts-martial are, indeed, empowered to inflict a very severe penalty on a paymaster guilty of with-holding the pay of officers or soldiers; yet, even from that clause, it is clear, that, though the court-martial can punish, it has no power to determine any claim of retention, as was attempted in this case; and that all such matters must be left to the courts of law.

But, allowing such a jurisdiction to be competent to courts-martial, their proceedings are subject to the review of the Court of Session. Military persons are amenable to the ordinary courts of law; so that, at common law, the proceedings of courts-martial might have been judged of by every inferior court; but, by a clause in the mutiny acts, all actions, for any thing done in consequence thereof, or in respect of any sentence of a court-martial, are limited to the courts of record at Westminster, or Dublin, and the Court of Session in Scotland.

Having thus established the jurisdiction, the pursuer pointed out sundry irregularities in the procedure, which it is unnecessary to mention here; and even produced a letter from Captain Gordon, denying that he had ever directed the complaint, or applied for a court-martial.

Hence the judgment of the Court can hardly be considered as determining whether courts-martial have any jurisdiction, such as was exercised in this case; but it fixes the point, that their sentences may be reviewed.

“THE LORDS repelled the defence, and found the defender liable in expenses.”

Act. *Crosbie.*Alt. *Rac.*

G. F.

*Fac. Col. No 46. p. 274.*

1770. November 17.

JOURNEYMEN TAYLORS in Edinburgh, Pursuers, *against* The INCORPORATION OF TAYLORS in Edinburgh, Defenders.

No 93.

Action for regulating the hours of working, &c. incompetent before the Court of Session *prima instantia.*

IN the year 1769, certain journeymen taylor brought a process of declarator before the Court of Session, concluding to have it found and declared, *imo*, That the hours of work that are daily exacted of them and the other journeymen taylor are rigorous and oppressive; which, therefore, should be shortened; and that the Court should ascertain how many hours a-day they