

No 27. present action, this Court will give redress. 16th June 1759, Wilson against Magistrates of Glasgow, No 24. p. 13076.

THE LORD ORDINARY had found the letters orderly proceeded.

THE COURT UNANIMOUSLY adhered, and found the suspenders liable in expences.\*

Lord Ordinary, *Ankerville.*

For the Suspenders, *Cullen.*

For the Chargers, *G. Fergusson.*

Clerk, *Sir James Colquhoun.*

R. D.

*Fol. Dic. v. 4. p. 194. Fac. Col. No 119. p. 265.*

1794. June 3.

HUGH CRAWFORD and Others *against* JOHN WILSON and Others.

No 28.

The householders in a country village are indiscriminately liable to the burden of having soldiers billeted upon them.

BEITH is a country village in the county of Ayr, consisting of nearly 800 inhabitants. Since the year 1787, from thirty to forty soldiers have generally been quartered there, and lately the number was increased to eighty.

After various methods of billeting them had been tried and abandoned, two of the Justices of Peace of the county authorised a committee of the inhabitants to superintend this branch of the police.

John Wilson, the billet-master appointed by them, granted billets on all the inhabitants indiscriminately, schoolmasters, widows, unmarried women, and paupers, excepted.

Hugh Crawford, and others, styling themselves a committee of the private inhabitants, presented a bill of suspension and interdict, praying the the Court to prohibit the billeting of soldiers upon them and their constituents. They admitted, that in cases of transient quarters, or of emergency, this burden must fall on all classes of the inhabitants; but they *contended*, that in the ordinary case of local quarters, it should be confined to innkeepers and dealers in provisions†; and

*Pleaded*; At common law, every man is entitled to the exclusive possession of his own house. The billeting of soldiers upon any person except innkeepers, who are obliged to furnish quarters to all the lieges, is a limitation of this privilege introduced by positive statutes, and cannot go beyond their enactment. Now, the only statutable provisions previous to the Union, relating to this subject, are the acts of Convention 1667 and 1678; and the acts of Parliament 1681, c. 3. 1689, c. 32. and 1690, c. 6. 1693, c. 4. 1695, c. 33. and 1698, c. 5. all of which either prohibit free quartering altogether, or allow it only on dealers in liquors or provisions. And the annual mutiny bill declares,

\* A similar decision was at the same time given in the case of Gray and others against the Bailie and Stent-Masters of Dalkeith.

† Under this last denomination, they seem to have included "butchers, bakers, candle-makers, grocers, hucksters, and common cow-keepers."

that it shall only be lawful to quarter soldiers in Scotland in such and the like "places and houses," as they might have been quartered by virtue of the laws in force at the time of the Union; which evidently implies, that certain houses were exempted, and these could be no other than those of the private inhabitants. Accordingly they have possessed this immunity by the immemorial and uniform usage of almost every considerable town in Scotland, and it has also been recognised by the decisions of the Court; 10th February 1785, Procurators of Glasgow against the Magistrates\*; 6th February 1789, Earl of Wemyss and others against the Magistrates of Canongate, No 25. p. 13080.

Besides, it is reasonable in itself, that innkeepers, and those who sell provisions, should be primarily subjected to this burden, as they derive an obvious benefit from the dealings of the soldiers.

*Answered;* The only statute of any consequence regulating the billeting of soldiers, is the 1698, c. 9. which subjects to this burden persons of all descriptions living in burghs or market-towns, while it frees from it tenants dispersed in the country, an exemption which strengthens the general rule.

But even although in common cases soldiers should only be billeted on certain descriptions of persons, yet in times of war, like the present, which render a larger military establishment necessary for the defence of the country, every person must bear a share of the burden.

The advantage which innkeepers and dealers in provisions derive from soldiers is exceedingly trifling; and at any rate, merchants, shoemakers, tailors, &c. all of whom come under the description of private inhabitants, are fully more benefited by their dealings.

THE LORD ORDINARY took the cause to report on the bill, with answers and replies.

THE COURT were clear, that Beith, not being even a burgh of barony, and all the inhabitants being nearly of equal rank, there was not the smallest ground for any class of them pleading immunity from the burden in question.

Several of the Judges doubted the propriety of the decision in the case of the Canongate in 1789, No 25. p. 13080, exempting inhabitants of a superior rank, and altogether unconnected with trade. In England (it was observed) the whole of this burden is no doubt placed upon innkeepers. But there it is imposed upon them by special statute, and they know precisely what they have to expect when they choose that line. In this country, however, no such statutable regulation has ever existed; and besides there are not a sufficient number of inns to accommodate the troops. Since therefore part of the burden must fall on the private citizens, it should be shared among all ranks with the most perfect equality. In fact, it is more severely felt by a tradesman, who in many cases has but a small house, than by a gentleman of fortune, who, if he does not incline to have soldiers in his family, can afford to provide them with quarters elsewhere. Accordingly, in a case from the Calton of Glasgow in 1779\*, the Court were of opinion, that no distinction should take place.

\* Not reported. See APPENDIX.

No 28.

among the different classes of inhabitants. A contrary judgment was indeed given, both in the case of the Procurators of Glasgow in 1785 and in that from the Cannongate in 1789. The former however went very much on specialities. The latter, and the case from the Calton of Glasgow, are therefore in fact the only two judgments upon the general point; and as they received opposite determinations, the question may still be considered as open for future discussion. THE COURT refused the bill.

Lord Ordinary, *Methven*. For the Suspenders, *Greenshields*. Alt. *Geo. Fergusson*.  
*R. D.* *Fol. Dic. v. 4. p. 194.* *Fac. Col. No 121. p. 270.*

1796. May 31.

JOHN AITCHISON and others *against* The MAGISTRATES and BILLET-MASTER of Haddington.

No 29.

All the inhabitants of a royal burgh are indiscriminately liable to have soldiers billeted upon them, except schoolmasters, unmarried women, and paupers.

THE Magistrates of Haddington had, from time immemorial, directed their billet-master to quarter soldiers, first on bakers, brewers, butchers, inn-keepers, grocers, and retailers of ale and spiritous liquors, and upon the rest of the inhabitants only in cases of emergency.

The persons primarily subjected to this burden brought a suspension against the Magistrates and the billet-master, in which they concluded, that it ought to fall indiscriminately on all house-holders.

The arguments used in both sides were, in substance, the same with those stated in the report, 3d June 1794, *Crawfurd against Wilson*, No 27. p. 13084.

THE LORD ORDINARY found, "That the quartering of soldiers in the town of Haddington should be equally upon the whole of the inhabitants without distinction, and therefore, suspended the letters *simpliciter*."

And, on advising a representation for the chargers, with answers, his Lordship "found, that the school-masters, unmarried women, and paupers, could not be quartered upon; and with that variation, refused the desire of the representation"

The Magistrstes having brought these judgments under review, three of the Judges were for altering them, and supporting the former practice of the burgh. The grounds on which they went were the same with those stated for the pursuers in the report, 6th February 1789, *Earl of Wemyss against the Magistrates of Canongate*, No 25. p. 13080.

A great majority of the Judges, however, were for adhering to the judgments of the Lord Ordinary, precisely on the grounds stated in the opinion of the Court in the case of *Crawfurd*.

THE LORDS "adhered."

Lord Ordinary, *Justice-Clerk*. Act. *C. Brown*. Alt. *Walker Baird*. Clerk, *Sinclair*.  
*R. D.* *Fol. Dic. v. 4. p. 194.* *Fac. Col. No 219. p. 514.*