

The pursuers reclaimed; and their petition was refused, without answers, **No. 19.**
 28th January 1808.

Lord Ordinary, Heronhill. Act. Advocate. John Macfarlan.
 Agents, John Dillon and J. Brunton. Svott, Clerk.
 M. Fac. Coll. No. 26. p. 88.

1808. February 24.

INCORPORATION OF FLETERS OF DUNDEE, against ROBERT WOODCOCK.

WILLIAM WOODCOCK, quitted the army with the following discharge:
 "By Major John Ross commanding the thirty-first regiment of foot, whereof
 "Sir Adol. Oughton, K. B. is Colonel, These are to certify, that the bearer
 "heretof, William Woodcock, recruit in the regiment aforesaid, has served
 "honestly and faithfully for the space of four months, but being unfit for the
 "service is rejected, and is hereby discharged, having first received a full and
 "true account of all his clothing, pay, arrears of pay, and all demands what-
 "soever, from the time of his enlisting to this present day of his discharge, as
 "further appears by his receipt on the other side hereof. Given under my
 "hand and seal of the regiment, this thirteenth day of July one thousand seven
 "hundred and seventy-four.

(Signed) "Jo. Ross, Major."

"On the back of the discharge there is the following docket: "I William
 "Woodcock do acknowledge, I hath have received all my cloathing, pay, arrears
 "of pay, and all demands whatsoever, from the time of my enlisting in the
 "regiment and company mentioned in the other side, to this present day of my
 "discharge; as also ... days pay to carry me to.

"As witness my hand, this thirteenth day of July one thousand seven hun-
 "dred and seventy-four.

(Signed) "WILLIAM WOODCOCK."

Robert Woodcock, the son of William, having carried on business as a flesh-
 er in Dundee, the incorporation of that craft complained to the Magistrates,
 who (9th Sept. 1806) assailed the defender with expenses. The pursuers
 then advocated the cause to the Court of Session; and Lord Armadale, in re-
 spect no answers had been lodged, remitted with instructions to alter; and the
 Magistrates altered their interlocutor accordingly. The defender then pursued
 an advocation, which was discussed before Lord Polkington, who advocated the
 cause, and assailed the defender with expenses.

The pursuers reclaimed to the Court.
 Argument for Pursuers.—The defender being a ~~man~~, and having been reject-
 ed as unfit for service, is neither within the words nor intendment of the statute.

No 20.
 The son of a
 "Recruit,"
 who has serv-
 ed "honest-
 ly and faith-
 fully for the
 space of four
 months, but
 being unfit for
 service is re-
 jected," is en-
 titled to the
 benefit of the
 Act 24th
 Geo. III.
 C. 6.

No. 20. From the words of the statute, 24th Geo. III. C. 6. and of all the other statutes on the subject, it is clear that the benefits therein contained are intended for those who have actually *served as soldiers*. The object of the legislature is further evinced from the periods at which the different statutes were passed. The successive statutes were passed at the termination of different wars, when, on the reduction of the army, a great number of men were returned to the occupations of civil life, and when, from motives of policy, it became necessary to facilitate their identification with the general mass of the people. These privileges were likewise designed as a fair and just reward to those whose lives had been dedicated to the service of their country, and who had thus been prevented in early life from obtaining, by regular apprenticeships in common form, the privileges of the incorporations. The first statute on the subject is that passed in Charles II's reign, immediately after the Restoration, 12 Ch. II. C. 16.; the second, is the 10th and 11th William III. C. 11. passed in the year 1697, after the treaty of Ryswick; the third, is the 12th Queen Anne, C. 13. passed after the treaty of Utrecht; the fourth, is the 22d Geo. II. C. 44. passed after the treaty of Aix-la-Chapelle; the fifth, is the 3d Geo. III. C. 8. passed shortly after the treaty of peace in 1762; and the sixth, and last act on which the defender claims, passed after the treaty of peace with America. All these being enacted at particular emergencies, tend to shew the purpose of the legislature.

Such being the design of the legislature, the defender is not entitled to the benefit of the act, because the defender's father never properly belonged to the *service*, and was only a recruit, and not a soldier, in the sense of the statute. So far from having served, he is declared to have been rejected as unfit for service.

Argument for defender.—In military language, a recruit is as much a soldier as the most experienced veteran, and four months service is as effectual to secure the benefits of the statute as any longer period. The term *recruit*, designates those who have been inspected by the surgeon and passed, who have received the bounty, have been put on the muster roll of the regiment, and have been entered in the periodical return of its strength by the commanding officer, —accordingly “*Recruits*” form one of the heads of these returns. If a man, who offers himself for enlistment, on being inspected by the surgeon, is reported unfit for service, he receives no certificate or discharge at all, and is not considered technically to be a recruit. A recruit, on the other hand, is the designation of a person who has been admitted as a soldier into the battalion, whose name is on the muster and pay lists, but who has not been posted into any particular company, nor appointed to any appropriate station in the regiment.

From causes into which it is now too late to inquire, the defender's father had become unfit for service before having been attached to any particular company, but had been under military discipline, training, and duty, for four months.

The Court, after having advised with military gentlemen, adhered to the interlocuter of the Lord Ordinary, 20th Feb. 1808. No. 20.

Lord Ordinary, *Polkemmet.* Act. *J. A. Murray.* Alt. *F. Jeffrey,*
Geo. Andrew and *Pat. Orr,* W. S. Agents. *M. Clerk.*

J. W.

Fac. Coll. No. 33. p. 115.

1808. *May 24.*

JOHN REID, JOHN BURNET, and Others, *against* JOHN and ANDREW NEIL.

ON the 14th February 1781, an act of the Town Council was passed, regulating the height of the buildings in the New Town of Edinburgh. This act was enlarged and explained by certain other acts in the year 1784, and on the 29th June 1785. By these it is enacted, That the Streets interjected between, and running parallel to, the great Streets of Prince's Street, George Street, and Queen Street, "shall not exceed two stories, exclusive of the sunk and garret story; and that no floor shall exceed eleven feet in height, including the joisting and floor, at least that the whole height of the side wall, from the floor of the sunk story, shall not exceed 33 feet."

The lot of ground now occupied by Clyde Street, lying on the south side of York Place between St. Andrews Square and Elder Street, was originally, according to the plan adopted by the Town, intended to be occupied by courts of stables and offices.

The pursuers, certain proprietors in York Place, thought it would be more advantageous to their properties if a certain portion of this lot were added to the back ground attached to their houses, and the remainder were occupied by houses similar to those in Thistle Street and Rose Street. The original plan was abandoned. The whole lot on which Elder Street and Clyde Street stand was exposed to public sale; and was purchased by the pursuer, Mr. Reid, (7th May 1800.) In the articles of roup, no limitation is imposed on the height to which the houses in Clyde Street might be raised. The 5th article stipulated, "In order to prevent any deviation from the mode of building hereby laid down, it is agreed that, before any building is begun on any of the streets, or lanes, the purchaser, or purchasers thereof, shall produce to the Lord Provost, Magistrates, and Council, an elevation of the building intended to be erected on any of the said streets, or lanes, to be by them approved of; and which elevations, if approved of by the said Lord Provost, Magistrates, and Council, shall be signed by the Lord Provost, or preses, and the purchaser and when so approved of, the same shall not, in any particular, be departed from, without the express consent of the said Lord Provost, Magistrates, and Council, had and obtained for that purpose in writing."

No. 21.

The act of the Town Council 1785, relative to the buildings in Edinburgh, applies also to those within the new Extended Royalty.