

No 10.
 eis, to damages for each day's absence, till the expiry of the indentures, without deduction for maintenance; which the master would have been bound to afford, had the apprentice continued in his service.

fulfilled.—*Urged* in defence: The extra-judicial declaration was no evidence to convict of theft, and he now retracted that declaration.—THE LORD ORDINARY found, That the defender was guilty of a breach of his indenture; and though liberated on bail to stand trial, and no prosecution had been brought, his master was not bound to take him back; and found him liable to his master for one shilling of damages for each day from the period of his imprisonment to the expiry of the indenture, deducting from this sum the expence of his maintenance, at the rate stipulated in the indenture:—But the LORDS, on a reclaiming petition, altered the last part of the judgment, and found, That the apprentice and his cautioners were not entitled to any deduction on account of maintenance.

Fol. Dic. v. 3. p. 33.

1778. July 28. JAMES CHALMERS *against* CHARLES NAPIER.

No 11.
 A master, claiming an apprentice, bound to serve at sea, from an impress-officer, found entitled to no damages, not having produced evidence that the apprentice had not been at sea, before the date of the indenture. It was debated but not determined whether a protection was necessary or not.

ALEXANDER GREGORY, an indented apprentice to serve at sea, was, on 29th December 1777, pressed out of a boat in the Frith of Forth, and carried on board a tender in the Frith. James Chalmers, Gregory's master, applied next day to Captain Napier, regulating captain of the impress service, to obtain his release, offering to show him the indentures. Captain Napier, without looking at the indentures, refused positively to release the apprentice.

Mr Chalmers brought an action, by petition, in the Court of Admiralty, for liberation of the apprentice; and, in the mean time, prayed for an interdict to prohibit Captain Napier from carrying off the said apprentice. Captain Napier pleaded in his answers, that Gregory, having no protection from the Admiralty, had no title to be exempted from the press.

The Judge-admiral pronounced this judgment, 5th January 1778: 'Stops all further proceedings in this cause, in order that, in the mean time, the petitioner may apply to the Lords Commissioners of the Admiralty for redress.' Mr Chalmers presented a bill of advocation, and another of suspension; in both of which he craved an interdict to prohibit Captain Napier from sending the apprentice out of the country till the cause should be determined. The bill of advocation was intimated on the 7th January. The interdict craved in the bill of suspension was granted 10th January. But the tender, with the apprentice on board, had sailed for a port in England on the preceding night. Mr Chalmers then brought an action of damages against Captain Napier.

Proceedings went on upon the bill of advocation, which was remitted to be advised by two Lords in the vacation; before whom Captain Napier was ordained to bring the person of Gregory upon the 15th April. The order was renewed to the 10th March, when Captain Napier produced a letter from the Secretary of the Admiralty, giving, as the reason why the orders of the Court had not been complied with, that Gregory had been sent abroad in his Majesty's service before

the Board had an opportunity of giving the necessary directions for having him conveyed to Edinburgh.

The Lord Ordinary took the bill of advocation, and proceedings, to report ; and, at the same time, the merits of the action of damages came to be advised.

Before proceeding to the merits, the Court determined two preliminary points, *imo*, Whether an advocation from the Court of Admiralty was competent in this case.

The defender *insisted*, That the question before the Admiral was strictly maritime ; the cause of action having arisen at sea, and the seizing of Gregory, if illegal, being a maritime delict.

Answered for the pursuer : The fact on which the complaint proceeded is not of a maritime nature, being a violation of a common law indenture. It is therefore of no consequence that the apprentice was impressed to sea. But the ground of complaint was strictly on shore. For the complaint is not, that the apprentice was illegally apprehended, but that he was illegally detained after an application to liberate him. The Admiral, by his judgment, waves his own jurisdiction, and sends the pursuer to the Lords of the Admiralty, to whom he is not obliged to submit any rights which the law gives him.

The Court were of opinion, That the Admiral's jurisdiction was not privative in this case ; and, on that ground, advocated the cause. In general, the Court thought, that the Admiral ought to have proceeded, especially on what was relative to the interdict ; the object of which is disappointed in such a case, if the judge does not immediately take cognizance of the merits of the application for it.

2do, The Court took into their consideration, Whether there was any contempt of authority in this case ? And, as no interdict was actually granted till after the apprentice was gone, the Court found, ' That the defender had done ' nothing in contempt of the orders of the Court ; and that, since the date of ' the order, he had done all he could to bring back the person of the apprentice.'

On the merits of the cause itself, and the action of damages,

Pleaded for the pursuer : That he is entitled to his damages arising from the illegal detention of his apprentice. The illegality of this detention is founded on the terms of the statute 13th Geo. II. c. 17. which enacts, ' That every person, ' who having not before used the sea, binds himself apprentice to serve at sea, ' shall be exempted from being impressed for the space of three years from the ' time of his binding himself apprentice.' The exception here given is clogged with no condition.

The subsequent clause is in these words : ' And for the better securing to all ' the persons before mentioned, the benefit intended them by this act, be it further enacted, That the Lord High Admiral, &c. shall, upon due proof of the ' respective ages, or circumstances, (as the case shall happen) of any of the persons above mentioned, grant a protection to any such person, to secure him from

11. ' being impressed for such time as, by the true meaning and intent of the act, such person is to be exempted.'

Although, by this clause of the act, the exempted persons are entitled to a protection, their right of exemption is not made to depend on their being possessed of such protection. It is not introduced as a condition under which the exemption is given; but for the better securing ' of these persons,' which supposes there was an exemption without it.

This apprentice, though he had no protection, fell within the description of an exempted person. The pursuer produced his indenture to Captain Napier, and in the process before the Admiral. In that process he likewise set forth, ' That Gregory was his apprentice, and that he was never at sea until after the ' date of his indenture.' The pursuer's averments, therefore, were, in both respects, precisely what the statute requires. Had he refused to establish these by proper evidence, or failed in it, the detention of the apprentice would have been legal. But the defender did not put the cause of his detention on that issue. His plea was, that it was of no consequence whether he had the requisites to entitle him to a protection or not, as he was not possessed of it. The detention, therefore, of the apprentice was illegal; of consequence damages are due.

Answered for the defender: The protection is to be considered as indispensably requisite to the exemption in the act 13th Geo. II. It is expressly given to ' secure the exempted person' from being impressed.

The interpretation of the act, which the pursuer contends for, would defeat the essential purpose of the impress service, which, if it is not executed with dispatch, ceases to answer its end. If the person entitled to the exemption has been so supinely negligent as not to get a protection, the impress service cannot be delayed by entering into processes and disputes, whether he had a title to get it or not.

Even supposing that a protection was not necessary, no action can lie for detention of this apprentice. For, although Mr Chalmers showed the indenture to the defender, he did not bring evidence of the apprentice not being formerly at sea, which is a necessary requisite, as much as the indenture, to the exemption.

The defender likewise pleaded an objection to the pursuer's title, that, from the terms of these statutes, it was not the meaning of the Legislature to give the benefit of them to any person but the apprentice himself.

In consequence of an order on the parties, an inquiry was made into the practice in England among the impress officers. Upon advising the cause, the Court were of opinion, That the pursuer having right to the service of the apprentice by the indenture, had a sufficient title to carry on this action. The Court gave no decisive judgment on the interpretation of the statute 13th Geo. II. Whether a protection is, or is not, a condition under which the exemption is given, and indispensably requisite to give a right to the exemption? But they seemed to be of opinion. That, at any rate, if there was not a protection, evidence must be expressly, and immediately, offered, not only of the apprenticeship by the in-

denture, but, likewise, of the apprentice not having been at sea before the date of the indenture; and that the pursuer had failed in this particular. The judgment was, 'find the defender not liable in damages to the pursuer.' (See JURISDICTION—of the Court of Session—of the Admiral Court.)

No 11.

A&C. Crobie, Erskine.

Adv. Advocate, Solicitor, Hay Campbell.

Fol. Dic. v. 3. p. 32. Fac. Col. No. 35. p. 59.

Wallace.

1789. December 22.

EDINBURGH GLASSHOUSE COMPANY, against JOHN SHAW.

SHAW was bound as an apprentice to the late Alloa Glasshouse Company; by whose articles of copartnership, it was allowed to each partner to sell his share, and transfer his place in the company to any person whatever, so that no certain reliance could be had on the continuance of any individual member.

The indentures bore, on the one hand, that Shaw, during the term of his service, which was seven years, should work 'in the Glasshouse at Alloa, or at any other glasshouse he might be ordered to by the said company, or their manager for the time;' and, on the other hand, that the company 'should cause him to be instructed in the different branches of glass-making.'

Within two years after the date of the indentures, the company resolving to give up business, conveyed to a trustee, for the purpose of its being sold, the whole of their stock, in which they comprehended 'the services of the workmen and apprentices engaged to their works.'

The effects were all purchased by the Edinburgh Glasshouse Company, in whose favour a disposition, specially mentioning the transfer of those services, was executed.

Shaw continued for several months to serve at the works under his new masters, but at length he withdrew from them, and engaged himself elsewhere. They still asserted their claim to his service; and the judge-ordinary having sustained that claim, granted warrant for his imprisonment, until he should find caution to return to the work that he had deserted. He then brought the question before the Court by suspension; and

THE LORD ORDINARY pronounced judgment as follows: 'Finds, That if the original partners had severally sold or transferred their shares to a new set of partners, the new company, or set of partners, would have been bound by the indentures, and intitled to the services thereby stipulated; finds no relevant or sufficient ground to distinguish the case in question from the case supposed, all the partners having in this case concurred in transferring their right of partnership, particularly the indentures, to a new company or set of partners; and also finds that they were entitled so to do by the true intent and meaning, and ex-

No 12.

The indentures of an apprentice to one trading company, not assignable to another, tho' carrying on the same trade, and though by the articles of partnership a continual and indeterminate change of individual members be admitted.