

APPENDIX.

PART I.

PUBLIC POLICE.

1776. *November 21.* WILLIAM THOMSON, *against* ANDREW CROMBIE.

IN this case, Thomson, the proprietor of the tenement at the foot of Home's Close, brought before the Court by bill of suspension a judgment of the Dean of Guild, by which Andrew Crombie, a dyer in that close, was allowed to paint his name upon Thomson's tenement.

The Lord Ordinary repelled the reasons of suspension. But the Court, upon this interlocutor being submitted to their review, altered it, and found that Thomson had a title to prevent Crombie from painting his name upon the tenement.

Lord Ordinary, *Monboddoo.* For Thomson, *Adam Ogilvie.* Alt. *Maconochie.*

J. W.

1800. *March 8.*

THOMAS LEISHMAN, *against* The MAGISTRATES of AYR.

IN the end of January 1800, the Magistrates of Ayr presented a petition to the Sheriff of the county, stating, That the supply of oat-meal at the weekly market of Ayr had been very deficient for some time past; that the evil was increasing; insomuch, that only three loads had been brought to it the preceding week; and they were apprehensive there would be none at all the next, though the inhabitants were willing to pay the current price (2*s.* 6*d.* a-peck) for it, and were many of them without a morsel of bread; that this was occasioned by the

No. 1.
Particulars
of the case
No. 23.
p. 13182.

No. 2.
A warrant
granted by a
sheriff, au-
thorising
magistrates,
in a period of
scarcity, to
seize and sell
at the market

No. 2.
price, oat-meal purchased from farmers by a dealer, and meant by him to be carried out of the county, found to be illegal.

Such purchases are not punishable under the head of forestalling or regrating.

meal being bought up from the farmers by dealers, and carried out of the county, frequently even in a clandestine manner; that the petitioners were informed, that there were some hundred bolls at a farm about sixteen miles from town, which had been bought up in this manner, and were intended to be shipped off; and therefore craving "warrant for apprehending and bringing as much of the foresaid meal to the market of Ayr, as shall be necessary for weeks supply, which is not less than forty bolls a-week; the petitioners being always responsible for the price of the meal to the owner thereof, whoever he may be."

The Sheriff-substitute immediately granted warrant 'to repair to the farmhouse of Ballochillie, and there to take possession of such meal as hath been brought there from the neighbouring or other farms in Carrick, and to bring the same to the meal-market of Ayr, and there to sell the same to the inhabitants and others, not under the current market price; the petitioners being always responsible to the owner of the meal for the price at which the same is sold; and further, granted warrant to impress what horses and carts shall be needful, for bringing off the meal from Ballochillie to Ayr.'

A few days after, a petition was presented to the Sheriff, by Thomas Leishman, baker in Paisley, bearing, That he had for some years past been in the habit of purchasing considerable quantities of meal from John Barclay, mealman in Kilwinning, bought by him in the county of Ayr: That since harvest last the petitioner had purchased from Barclay all the meal bought by him in this county, and particularly in the district of Carrick, which the petitioner again sold to the inhabitants of Paisley, and other parts of Renfrewshire, and some hundred bolls of which ought to have been delivered about this time: That in consequence of the warrant above-mentioned, the Magistrates of Ayr had seized at Ballochillie, and were selling at their own hand, 222 bolls of this meal, on which account the petitioner had protested for damages and expences: That the petitioner and Barclay had still a considerable quantity of meal, which they meant to convey from Carrick to Paisley, but which the neighbourhood, encouraged by the warrant, declared their determination to prevent them from removing. The petition therefore craved, that the warrant should be recalled, and the petitioner protected by a military force, if necessary, in transporting the meal.

The Magistrates answered, That the petitioner was, by his own statement, guilty of forestalling and regrating.

The Sheriff-substitute 'found, That before further procedure, the petitioner must instruct that he truly purchased the quantity of oat-meal which was found at the farm of Ballochillie, and brought to Ayr, and disposed of by the Magistrates, and the rates at which he and his agents purchased the same.'

A bill of advocation having been refused, Leishman, in a reclaiming petition,

Pleaded : The interlocutors complained of proceed upon the very erroneous idea, that grain is not the subject of commerce, but is the exclusive property of the inhabitants of the district in which it is produced ; whereas large towns and manufacturing counties, which must at all times derive their supplies from without, can in times of scarcity be prevented from absolute famine, only by adopting the very opposite principle. The interference even of the Legislature, in regulating the circulation of the necessaries of life, has been much censured ; see *Wealth of Nations*, 8vo edit. vol. ii. p. 290, &c. and if inferior Magistrates, whose information must be very limited, were permitted to interfere, the consequences would be ruinous.

The Magistrates, in their answers, stated, in strong terms, the urgency of the circumstances in which they had applied to the Sheriff, and the impracticability of otherwise procuring an immediate supply of oatmeal for above 7000 people, who depend on the weekly market of Ayr, (all which was denied by the petitioner) and contended, that theoretical principles with regard to the freedom of commerce, must yield to such pressing cases ; and upon such views the Court proceeded in framing the act of sederunt 17th November 1757, and deciding the case, 31st May 1797, Band against Clerk, &c. (not reported :) That the petitioner had resisted all investigation into the nature of his right to the meal in question, or means by which it had been procured ; but from his own statement, he and his agent appeared to have been guilty of that species of forestalling and regrating, which consists in purchasing up a commodity, for the purpose of enhancing the price, and preventing fair competition in open market, which is the object of punishment, both here (1592, C. 150 ; *Erskine*, B. 4. Tit. 4.) and in England, stat. Edward V. and VI. C. 14. Opinion of Lord Kenyon, Shropshire Assizes, 3d August 1795 ; Late case of Mr. Waddington.

Upon advising the petition, with answers, the Court expressed strong disapprobation of every interference of magistrates and judges with the free circulation of the necessaries of life, as such interference, (it was observed,) instead of diminishing, increases scarcity, and would produce a famine in large towns. It is not easy to figure a case of such urgency as to justify a warrant of the nature complained of. When any thing of the kind is apprehended, application should be made, not to the Judge-Ordinary, but to Parliament or the Privy Council.

The petitioner's purchases had no connection with forestalling and regrating, which are well defined by Mr. Hume on Crimes, vol. 2. p. 403.

The cause was remitted to the Sheriff, with instructions to recall his interlocutors, and give judgment in favour of Leishman.

Lord Ordinary, *Balmuto*. For the Petitioner, *Solicitor-General Blair, Ar. Campbell.*
Alt. Ja. Ferguson.