

No 2. to be at the expenses of doing the thing; *2do*, If the act 1661 had intended any such encouragement as this, it would have certainly expressed it, as it does in other cases, where the burdening of neighbours was under view; for example, where inclosures fall to be upon marches, the next adjacent heritor is to be at equal pains and charges; *3tio*, In the foresaid act there is the following clause; "and where there are liferenters upon lands, the same shall be done upon the equal charge of the liferenter and heritor; and in case of proper wadsets, the charges shall be added to the reversion;" which clause, although it concerns the expenses of inclosures in general, yet it must likewise relate to the charges of casting about the highway, as a consequential part of the expenses of inclosing, especially when the clause anent the highway immediately precedes it.

It was *argued* for the Justices; That the old way stood in need of repair, and would have wanted double the assistance from the suspenders that was appointed for the new, and therefore the Justices' warrant was rational and just; *2do*, By acts of Parliament the Justices of Peace are empowered to change the highways, and remove them entirely from one place to another, and to oblige the Tenants and possessors to the same carriages towards making the new way, that they have done in the present case; and therefore the suspenders had no reason to complain.

It was *answered* for the suspenders to the *first*, That the accidental bad condition of the highway could never entitle the inclosing heritor to the assistance of the neighbouring Tenants, there being nothing provided in the law to that purpose. And to the *second* it was *answered*, That the Justices may have power to alter roads for the public benefit, and to call for the assistance of the neighbours to such alterations; but there is no reason why such a burden should be thrown upon them, when the alteration is for the benefit and advantage of a private person.

It was farther *alleged* for the Tenants, That the work being already done, their assistance could not now be required.

THE LORDS suspended the letters, and assoilzied the Tenants.

Reporter, *Lord Kimmergham*.
Alt. *Sir Ja. Stewart*.

For the Suspenders, *And. Macdowal*.
Clerk, *Dalrymple*.

Fol. Dic. v. 4. p. 200. Edgar, p. 96.

No 3.
No action lies on the statute George I. entitled an act for preventing tumults, &c. for forcibly

1743. *January 28.*

Colonel STRATON *against* The MAGISTRATES and TOWN-COUNCIL of MONTROSE.

IN the year 1741, a great many of the inhabitants of Montrose, having broke into some ginnels belonging to Colonel Straton within the said town, and taken a considerable quantity of meal therefrom, he brought an action on the

statute of George I. wherein he called the Magistrates and Town-council, as representing the community, and concluded against them as such for damages.

It was *pleaded* for the defenders, That no action was granted by the statute against them as representing the community; for that, according to the directions thereof, the conclusion ought to have been against the burgh, that is, the inhabitants thereof, who are made liable to make up the damages out of their own pockets; but that the community were not made liable to make up the same out of their common good. *2dly*, No action lay on the statute for any damage sustained by the pursuer, through any part of the grain's being abstracted or damaged, the damage awarded by the act relating only to such as are sustained upon houses or fabrics being demolished, or attempted to be demolished, but did not reach to the damage sustained upon the goods that might be within the said houses.

No 3.
carrying away
grain or goods
out of any
house.

THE LORDS sustained the objection to the pursuer's libel, with respect to the conclusion against the Magistrates; but, upon a reclaiming petition and answers, they repelled the objection; and likewise found no action lay on the statute for damage arising for carrying off grain or other goods out of any house or out-house, but only for the damage done by pulling down such house, &c.

Fol. Dic. v. 4. p. 197. C. Home, No 224. p. 367.

1750. February 24.

ELEMING against URE.

ROBERT FLEMING, printer in Edinburgh, applied by petition to the Dean of Guild, shewing, That Ure, proprietor of a house immediately above one of his, in a close near the Cross, had set the same to a fencing-master, the noise of whose school was such a nuisance, as destroyed the use of his house, which nobody would live in; and thereupon the Dean of Guild having visited the houses, discharged Ure to set his house longer for the said use.

Ure offered a bill of suspension, which the LORDS refused.

Fol. Dic. v. 4. p. 199. D. Falconer, v. 2. No 134. p. 152.

No 4.

1750. July 24. ROBERT HAMILTON against INHABITANTS OF KIRKCALDY.

A COMPLAINT having been insisted in before the Justices of Peace of the shire of Fife, at the instance of Robert Hamilton their overseer of the highways, against certain of the Inhabitants of Kirkcaldy, for not repairing the same; the Justices fined them; of which they offered suspension, and the LORD ORDINARY, on advice, 21st July, "Passed the bill as to those sailors who went upon foreign voyages, or voyages coast-ways; but not as to fishers, or those who

No 5.
Inhabitants of
a royal burgh
are not ex-
empted from
working on
the highways.