

1757. *January 4.*

The JUSTICES of PEACE, and COMMISSIONERS of SUPPLY, of the County of Berwick, *against* The TENANTS in the Parishes of COCKBURNSPATH and COLDINGHAM, &c.

THE Justices of Peace, and Commissioners of Supply, of the county of Berwick, at several meetings for repairing the highways in that county, came to certain resolutions, importing, ' That the statute-work should be converted into money : That the rate of every labouring man, whether cottager or tradesman, should be 4d. for each day he was bound to labour, for the first year : That every tenant should be rated as 3d. in the pound Sterling of their yearly rent, in full of all labour by law to be performed by them : That the conversion of the statute-work into money, at the above different rates, should only take place in the event of the persons therein liable not performing the said statute-work, and declaring themselves willing to pay the said compositions or rates in lieu thereof; and that it should be in the option of every person to perform the statute-work, or to accept of and pay the composition : That to all the intimations to be made at the different parish churches, a proper clause should be added, setting forth, that this alternative was in every person's option.'

They further resolved, ' That two particular roads should be first repaired, but that if any of the highways of the shire should become so bad at a particular place, as to be dangerous, or interrupt travelling, upon proper application, orders should be given for the immediate reparation of such dangerous places.'

In consequence of these general resolutions, the inhabitants of the parishes of Cockburnspath, Coldingham, and others, were called out to work at one of the roads agreed on.

Of this order they complained by a bill of suspension; for that, *imo*, The road to which they were called, lay at a great distance from them, while other roads, much nearer to them, lay unrepaired; whereas, it was the duty of the Commissioners to have divided the county into districts, agreeably to the directions of the act 16th, Parliament 1669, ' as they lie most ewest to the several highways to be repaired, and as they may have the most equal burden.' *2do*, That the composition money, which it was put in their option to pay, if they chose not to perform the work, was higher than the act 5th, Parliament 1670, authorised, and was; besides, proportioned by a rule authorised by no law, which resembled a tax, and might be gradually raised to an exorbitant sum.

It was *answered, imo*, That by the statutes respecting the highways, the Justices of Peace and Commissioners of Supply are appointed the sole judges within their respective counties, of the proper application of the statute-work. This is clear from act 38th Parl. 1661, act 16th Parl. 1669, act 9th Parl. 1670,

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Powers of Justices of the Peace, &c. as to the application of the statute-labour for repairing highways.

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and act 5th Geo I. By which last act, in particular, they are authorised to convene the tenants, &c. to work three days, 'on such days, and at such places, as the said Commissioners, or their Officers, shall from time to time appoint.' Nor can these powers be limited or abridged, unless it can be made evident, that they are wantonly perverted to the oppression of the people, and not exercised with a view to the general advantage of the county, which could not be affirmed in the present case, as it was the intention of the Justices to pursue the most advantageous plan for obtaining good roads in this county, that of applying the whole force of the county to each particular road in its turn, till the whole should be completed.

2do, By the act 9th Parl. 1670, the power of the Commissioners is not limited with respect to the composition they may take, when they are willing to dispense with the actual labour. The words of that statute are, 'That where the ways lie at a great distance from those who are liable to repair the same, it shall be leisom to the said Justices and Overseers, to dispense with those persons who live at such a distance, they paying six shillings Scots yearly for ilk man, and twelve shillings for ilk horse, which ought to have been employed in the said work.' It is therefore leisom to the Commissioners to take six pence Sterling for each man, and twelve pence for each horse, but they are not prohibited from taking more. The method of proportioning the composition amongst the tenants by their real rent, is calculated to render the burden equal. By no other means can the pasture-farms be made to bear a just share of the trouble and expense of repairing the highways, and the rate agreed on amounted to no more than six shillings Sterling yearly for a rent of L. 24.

THE LORDS found, That the Justices of Peace, and Commissioners of Supply, have a discretionary power to determine what roads shall be first repaired, and to divide the shire into districts, but that they cannot call out any persons to work at the roads, who live at such a distance, as that they cannot come and go in a day, and work a day's work, under any higher penalty than the 9th act, Parl. 1670, directs.

Reporter, *Shewalton*.

Act. *Johnstone, Montgomery, R. Dundas.*

Alt. *G. Elliot, And. Pringle, Lockhart.*

W. J.

Fol. Dic. v. 4, p. 201. Fac. Col. No 1. p. 1.

1757. *February 1.*

TRUSTEES for Repairing the Turnpke Roads from NORTH QUEENSFERRY to PERTH
against The MAGISTRATES and TOWN COUNCIL of PERTH.

No 10.

Inhabitants
of royal bo-
roughs found
liable in sta-

THE 8th act, Parliament 1617, authorised the Justices of Peace 'to give order, as they shall see most convenient, and with least grief to the subject, for mending all highways and passages to or from any market-town or sea-port