

No 9.

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

within the shire,' with a discretionary power, of censuring or punishing those who refuse to concur in mending such highways or passages.

The same powers were given to the Justices of Peace by the 38th act, Parl 1661.

By the 16th act, Parl. 1669, the Justices were required 'to convene all tenants and cottars, and their servants, who are to have in readiness horses, carts, sledges, spades, shovels, picks, mattocks, and such other instruments as shall be required,' and to work upon the highways during certain days yearly, 'betwixt the bear-seed and hay-time, or harvest.' The Justices were moreover empowered 'to poind the readiest goods of the absents, without further solemnity but apprising the same upon the ground of the land.'

And, 'because the work of the inhabitants within the several bounds will not be able sufficiently to repair the highways,' the act ordained the heritors of each shire, 'comprehending the heritors of the borough-lands therein,' to be assessed in a certain sum yearly, according to their valued rent.

The act 9th Parl. 1670, allowed the Justices to compound, in certain circumstances, with the persons liable in the statute-work.

By an act 5th Geo I. the Justices, and the Commissioners of Supply, were ordained 'to convene the tenants, cottars, and other labouring men within their bounds,' for the repairing of the highways, 'to work three days before the last day of June, not being in seed-time, and three days after harvest.'

An act passed 26th Geo. II. for repairing the highways between North Queensferry and Perth; certain tolls were thereby appointed to be levied, and, for the execution of the act, trustees named, among whom are 'the principal Magistrates of each Royal Borough within these bounds of the counties of Perth and Fife.'

It was thereby enacted, 'That all persons who are by law chargeable towards repairing the said roads, shall remain chargeable, and do their respective works, upon such roads as the Trustees, or any three of them, shall direct.'

The act, moreover, contains the following clauses.

'And for removing all doubts and questions that may arise, concerning who are liable in performing the services aforesaid, it is further enacted, and declared, That every heritor labouring and possessing his own grounds, shall be obliged to assist at repairing the highways;' as also, 'That all carters, and brewers, occupying carts, residing in the counties aforesaid, shall be obliged to perform their several services at the respective high-roads, at such times, and for such days, as are prescribed by law, and that every householder, cottager, and labourer, within the said counties respectively, shall work on the highways, by himself, or another employed by him, for the days, and under the penalties, as are already prescribed by law.'

A quorum of the Trustees named by this act charged certain householders in the royal borough of Perth, to send each of them a person to work on the

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tute work on
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ways.

No 10. foresaid highways. The Magistrates and Town-Council of Perth, on behalf of the householders, suspended this charge.

Pleaded for the suspenders, Neither by the general laws concerning the repairing of highways, nor by the particular act 26^{to} Geo. II. are the inhabitants of a royal borough liable in the statute-work.

The situation of the roads to be repaired, the description of the persons who are bound to repair them, the seasons of the year at which they are called out, the instruments with which they are to come furnished, the penalties laid on those who absent themselves, the manner of levying such penalties, the nature of the subsidiary fund provided for repairing the highways, and the practice in Scotland as to the execution of those laws, all concur in shewing, that the general laws meant to impose this burden on the inhabitants of the country, and the possessors of predial tenements, but not on the inhabitants of royal boroughs.

The roads to be repaired lie in the country, and pass through the grounds possessed by countrymen; it is natural, therefore, to oblige countrymen to repair them. Other, and very different services, are imposed upon royal boroughs; they are bound to repair the causeways within their territories, to perform watching and warding, and to quarter soldiers.

The description of the persons bound to repair the highways, is limited to those who reside in the country. The act 1669 mentions tenants and cottars, that is, men who possess and labour grounds. The act 5^{to} Geo. I. adds, other labouring men; this expression, in common language, relates to men who gain their livelihood by country-work.

The seasons of the year allotted for the statute-work, are those which are most convenient for labouring men.

The instruments with which those liable in the statute-work must be provided, are such as are used by persons occupying lands, but which the inhabitants of boroughs seldom possess, and seldom can use.

The penalties imposed by the act 1669 on absentees, prove, that all who are called out are supposed capable of such work. Now, it is certain, that most of the inhabitants of boroughs are not.

The penalties are to be levied on the ground of the land; it follows, that the absentees were understood to reside there, and not in boroughs.

The subsidiary fund for repairing the highways is to be levied from the heritors, because the work of the inhabitants within the several bounds is not sufficient for executing the purposes of the law, and it is reasonable, that the proprietors of the ground should finish what the possessors of the ground leave uncompleted.

And with respect to the execution of those laws, the inhabitants of royal boroughs have from time immemorial been exempted from the statute-work.

Such was the interment of the general statutes for repairing the highways, and it does not appear that the particular statute 26^{to} Geo. II. meant to change

the general law; this will not be presumed, especially in an explanatory statute. The expression, householders, cottagers, and labourers, is taken from English statutes; but as reference is made to the laws of Scotland, for determining the extent of the service, and of the penalty on default, such expression must be interpreted according to the laws of Scotland. There are many persons residing in the country, and fit to perform the statute-work, who yet are not tenants nor cottars, nor, in strictness of speech, labouring men; it may therefore have been proper to vary the words of the statute 1669, and 5^{to} Geo. I. and to comprehend such persons under the general denomination of householders. But householders cannot mean all who possess houses, for all heritors possess houses, and yet all heritors are not called to work by the act 26^{to} Geo. II. but only certain heritors, and they too in virtue of a special clause.

Besides, householders within the county, does not comprehend the inhabitants of a royal borough, for, in law, the county and the borough are contradistinguished. Thus the cess imposed upon a county, includes not the cess imposed upon a borough. Thus the Justices of Peace are authorised to license ale-houses within their respective counties, and yet the power of licensing ale-houses within royal boroughs is given to the Magistrates.

Pleaded for the chargers, The acts 1617 and 1661, lodge a discretionary power in the Justices for repairing the highways, with the least grief to the subject. In the later statutes, the description of the persons whose work was particularly required, is indeed less extensive, but there is no exemption provided to the inhabitants of royal boroughs; neither does there seem any reason for exempting them; they are frequently tenants and labouring men, as well as those residing in the country are. The inhabitants of royal boroughs, by the goods which they transport, and by the heavy carriages which they use, break the highways as much as they who reside in the country do, and they have more benefit from them when repaired.

The particular services performed by royal boroughs cannot exempt them from the statute-work. The reparation of causeways is an obligation incumbent on them by their charters, and for this end petty tolls are generally in royal boroughs, and especially at Perth, established. The service of watching and warding is the *reddendo* of the charters of royal boroughs, and at the same time is calculated for their own conveniency and security. The quartering of soldiers is not a permanent burden, but in consequence of annual statutes, and it is imposed, in common with royal boroughs, upon market-towns, who pretend to no exemption from the statute-work.

Whatever may have been the case formerly, when the repairing of highways was much neglected, it is certain, that of late years the inhabitants of royal boroughs have not been exempted from the statute-work; and in the only case where this exemption was pleaded, the Court repelled it, 24th July 1750, Robert Hamilton against the Inhabitants of Kirkcaldy, No 5. p. 13159.

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But although such exemption were to have been sustained upon the general statutes, it cannot upon the particular statute 26^{to} Geo. II. Householder, in common speech, implies one who possesses a house; and were it to be restricted to the sense for which the suspenders plead, it would be a superfluous word, for persons residing in the country could pretend to no exemption before that act passed. A householder within the county, must comprehend a householder in Perth; for whenever the law means to distinguish between boroughs and the rest of the county, it marks the distinction. Thus, in the jurisdiction act, jurisdictions competent to royal boroughs are expressly excepted; but when this distinction is not made, county or shire includes borough; as in the act 2. Parl. 2. Cha. II. establishing a militia; and in the 39th act, 19 Geo. II. 'for the more effectually disarming the Highlanders,' the cess of the county is distinguished from the cess of the borough, because the law imposes a certain proportion of the cess upon the boroughs, distinct from what is imposed on the counties. Besides, if county, in the 26^{to} Geo. II. did not include royal boroughs, 'the principal Magistrates of each royal borough within these bounds, of the counties of Perth and Fife,' could in no reason have been appointed Trustees for the execution of the act.

THE LORDS found the suspenders liable in the statute-work of the turnpike-road in question.

Reporter, *Bankton.* For the Suspenders, *J. Craigie, Advocatus.* Alt. *Lockhart, Ferguson.*
W. J. *Fol. Dic. v. 4. p. 200.* *Fac. Col. No 78. p. 136.*

* * * This case was appealed:

THE HOUSE of LORDS, 10th April 1757, ORDERED and ADJUDGED, that the appeal be dismissed, and that so much of the said interlocutor as is therein complained of, (viz. that which found the householders of the burgh of Perth liable in the statute work of the turnpike roads), be affirmed.

1758. *January 11.*

TRUSTEES of GLASGOW TURNPIKE ROAD *against* INHABITANTS of the Town of PAISLEY.

No 11.

The whole inhabitants of a borough may be called out to repair high-ways.

SOON after the decision in the question betwixt the Trustees of the Perth turnpike roads and the Inhabitants of Perth, (*supra*), in which these last had *pleaded*, That no inhabitant whatsoever of a royal borough, or borough of regality, could be called out to repair the high-roads, and in which the Court had found "the inhabitants, suspenders, liable in the statute work of the turnpike road in question," the trustees of the Glasgow turnpike ordered out several artificers and tradesmen of the town of Paisley, to amend the turnpike leading through Renfrewshire to Glasgow.

In a suspension of these orders, brought by these tradesmen and artificers, the LORDS found, "That the whole inhabitants of the town of Paisley may be called out to repair the high-roads in time coming."