

1772. December 5.

The JUSTICES of PEACE for the Shire of Clackmanan, *against* The MAGISTRATES and TOWN COUNCIL of Stirling, Patrons of Cowan's Hospital, and MR THOMAS CAMPBELL.

THE Justices of Peace for the shire of Clackmanan, after various steps of procedure relative to a proposed alteration of the road leading from Alloa to Stirling, having, by their final sentence, of date 6th June 1771, passed an order for the alteration of the said road, in the manner thereby directed, conform to a plan or survey taken of the grounds, and authorised several of their number to stake out the course of the new road, agreeably to the line marked in the said plan, 'reserving to Mr Campbell to apply to the Justices, or otherwise, for 'obtaining indemnification against Mr Christie for the addition of the new road 'now thrown on his grounds by the alteration, and of which Mr Christie's 'grounds is relieved, either by obtaining a sum of money as an equivalent, or 'an exchange of ground, which may be easily done by a proper regulation of 'the march between them at the south-east point of Mr Christie's property.' These proceedings were complained of by a bill of suspension at the instance of the Magistrates and Town Council of Stirling, as patrons of Cowan's Hospital, and Mr Campbell of Causewayhead, through whose grounds the new road was proposed to be carried; which bill having been passed, and a remit granted to discuss the same summarily, the Lord Ordinary took the cause to report; and the suspenders, independently of other objections and defences, having urged the omission of the requisites prescribed by the statute 1669, cap. 16. in regard to ascertaining the private party's damages previous to any alteration or enlargement of the road, as fatal to the proceedings in this case, the following judgment was pronounced.

'In respect that the decree of the Justices does not proceed in terms of the act of Parliament 1669, and that, previous to the order for the change of the road, the extent of the damages which would be due thereby to the proprietors of the ground through which the new intended road was to pass, were not ascertained; therefore, suspend the letters, reserving to the Justices to take this matter into their consideration *de novo*, and to proceed in terms of the act of Parliament, and decern accordingly.'

Reporter, Coalston. Act. Al. Lockhart. Alt. Sol. Dundas. Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 357. Fac. Col. No 38. p. 101.

No 334.  
Omission of the requisites in act 1669, c. 16. previous to an order of the Justices of Peace for the change of the road, fatal to the proceedings.