

MONEY.

BORELAND *against* THISTLE BANK.

MONEY, or bank notes, which serve the purposes of money, are not subject to any *vitium reale*. See Kaimes' Rem. Dec. 105; and the same by Kilk, p. . The same was found, *anno* 1769, *Boreland, weaver in Paisley, against Thistle Company at Glasgow.*

MONOPOLY.

1774. *March* 10. ROEBUCK, GARBET, and COMPANY, *against* STIRLINGS and COMPANY.

DR John Roebuck, Samuel Garbet and Company, having, as they alleged, discovered a new invention of extracting the oil or spirit of vitriol from sulphur, in vessels of lead, thought it prudent to take the protection of a patent for the time permitted by law. They applied by petition to his Majesty, in usual form, for a patent for fourteen years, limited to Scotland, where the manufacture was to be carried on. This petition was remitted to the Lord Advocate, to consider and report his opinion thereon; and, at the same time, Mr Garbet emitted an affidavit that Dr Roebuck and he had, with much study, and at great expense, made this discovery; and that, so far as they knew or believed, the same had not been made or used by any other person. Upon considering this petition, Lord Advocate made a report, that he was humbly of opinion that his Majesty, if graciously pleased so to do, might grant the patent prayed for, provided that the petitioners did, within a limited time, cause a particular description of their said invention, by writing under their hands and seals, to be enrolled in the Chancery in Scotland. And accordingly the patent was granted, and expedite.

Messrs Stirlings and Company, in the neighbourhood of Glasgow, thinking this patent obtained by obreption and subreption, and the terms of it not properly complied with, resolved to pay no regard to it,—and begun to erect buildings for the purpose of carrying on a manufacture of the same kind. Messrs Roebuck and Garbet, in January 1772, presented a bill of suspension of their work, praying for an interdict. Lord Hailes, Ordinary on the Bills, 21st January 1772, pronounced this interlocutor:—"In respect that the suspenders do not show, that the erecting any manner of buildings is within the words of

the prohibition in their patent ; and in respect that, if the buildings in question should prove to be erected singly for the unlawful purpose of incroaching upon the suspender's patent, the Messrs Stirlings will, in the event, be the only sufferers,—the Lord Ordinary on the Bills finds, That the suspenders have no right nor interest, *hoc statu*, to obtain an interdict of the buildings ; and therefore refuses the bill."

The suspenders having offered a second bill of suspension, "The Lord Kaimes, Ordinary, 3d December 1772, passed the same upon caution, without prejudice to go on with the work in the meantime." And the suspenders having reclaimed to the Lords, they, 20th January 1773, remitted to the Ordinary to pass the bill *simpliciter*.

At discussing the suspension, after a variety of procedure, and a proof allowed both in Scotland and England, the Lords, 10th March 1774, pronounced this interlocutor :—"In respect it appears, from the proof adduced, that the art of making oil of vitriol from a mixture of sulphur and saltpetre, in vessels of lead, was, at the time, and before the date of the letters patent in favours of the suspenders, practised by different persons in England ; therefore the Lords find the letters orderly proceeded, and decern." And this judgment being appealed from ; the House of Lords, 27th May 1774, affirmed the "interlocutors complained of, for other reasons as well as the reason specified therein."

This suit being ended in this manner, the Messrs Stirlings, on the one part, brought an action of damages against Messrs Roebuck and Garbet, on account of the loss they had sustained by having their manufacture stopt for the space of twenty-eight months, by the above illegal and ill-founded opposition ; and also for a certain sum, as the expenses of that litigation. (In the first process no expenses had been given in the Court of Session ; nor costs in the House of Peers.) And to meet this process, Messrs Roebuck and Garbet brought a counter-process of damages against the Stirlings, founded on an allegiance, that Messrs Stirlings had, by corrupting their servants, and other unjustifiable and hidden means, stolen their secret from them, and rendered their patent of no effect. Lord Stonefield assolyied the parties mutually from both actions ; but, on a reclaiming petition to the Lords by Messrs Stirlings, the Lords at first, 1st February 1776, adhered to the Ordinary's interlocutor ; but, on a second bill, 13th June 1776, they altered, and found damages due.

For, although it be true that suspensions and interdicts are established modes of trying controverted questions, and it does not follow, as matter of course, that every person who applies for an interdict, and afterwards fails in supporting the grounds of that application, is liable to an action of reparation and damages ; yet at the same time such action is competent, and, upon special cause shown, damages will be given ; especially as in this case, where the Lords seemed to be of opinion that the patent was obtained by obreption and subreption ; and that the suspenders ought to have allowed the buildings to have proceeded, and trusted to the caution which was offered, at passing the bill by Lord Kaimes for an after indemnification.

The conclusion for the costs of the former suit, *qua* costs, was held clearly to be incompetent.

1777. *March 8.* MESSRS MURDOCH, WARRACH, and COMPANY *against* NATHANIEL CHIVERS.

A COMPANY at Glasgow, who had set up a manufactory of porter, apprehending that there were some secrets in the trade, which they could learn only from a London brewer, applied to Nathaniel Chivers, one of that number, to come and teach them his art, for which they engaged to give him a reward of 100 guineas, besides expense of journey, &c. ; but upon this express condition that he should not communicate it to any of the other brewers in the city or neighbourhood of Glasgow. He came accordingly,—taught them his art,—received his reward,—and staid with them several months; after which he set up a brewing of porter in Glasgow for his own account, using the brewing looms and servants of one Struthers, a common brewer in Glasgow. The porter company complained of this as a breach of bargain and good faith: they insisted that it was both against the spirit and letter of the agreement, and particularly, they insisted that it was impossible for Chivers to carry on this trade without communicating his art to Struthers' servants, whom he used in his operations. This last he totally denied, and insisted, that though he used Struthers' servants as servants, yet he communicated to them nothing of his secrets, and that he had *bona fide* fulfilled his engagement with the Porter Company, having taught them his art, and at the same time communicated that art to no other person. It was true he now brewed for himself,—this was not against their contract,—and if he was not allowed to do this he behoved to starve. The Company however applied to the Sheriff of Lanarkshire for an interdict; which was granted, 18th November 1776, first prohibiting him to communicate his art; and next, as a consequence thereof, prohibiting him to brew in the city or neighbourhood of Glasgow. Of this Chivers having presented a suspension, the bill was passed by Lord Kaimes, 21st February 1777; and, upon a reclaiming petition and answers, the Lords, 8th March 1777, adhered.

1776. *August* . STEWART *against* SOUTER.

FOR the sake of police, it is understood that the Magistrates of a royal burgh have power to erect workmen, in a particular way, into small societies with exclusive privileges. This is the case of the chairmen and porters in the city of Edinburgh. The consequence is, that no person can carry a chair, except an entered chairman; nor any man act as a porter, except an entered porter. But, on account of the multiplicity of porter business in the city at the term of Whitsunday, the term of flitting and carrying furniture, it has been usual for the inhabitants to employ chairmen to carry their furniture. At the