

No 19.

was not the fact; *2do*, That although the Dean of Guild can make no arbitrary regulations, tending to deprive a person of his property, yet he has certainly discretionary powers in the matter of police, and particularly *ne opere manufacto-aut aliquo immisso urbs deformetur*; and the regulation in question fell within those powers, in the exercise of which that useful Magistrate ought to be supported; and, *3tio*, That, even from the suspender's own account of the matter, it was humoursome in him striving to keep up what in reality is of no benefit to him; which was also confirmed by one of the Judges, who had, when on the circuit, inspected the subject along with his colleague.

THE COURT "found the letters orderly proceeded."

Act. *W. Craig.*Alt. *Blair.*Clerk, *Campbell.*

*Fol. Dic. v. 4. p. 260. Fac. Col. No 136. p. 160.*

No 20.

What damages may be awarded under the riot act—on whom—and who to be levied?

1775. February 17. THOMAS MYLNE *against* The COUNTY of PERTH.

MR MYLNE instituted an action against the County of Perth, called by edictal citation, founding upon the statute 1st Geo. I. chap. 5. and concluding for reparation of the loss sustained by a mob who attacked his house at Mylnfield, in the county of Perth, and, as he set forth, almost totally demolished the fabric of the house, destroyed a large quantity of silver plate, papers, and other valuable articles, and plundered and carried off other articles to a considerable value, amounting, the said loss and damage, as by particular condescence and list, to L. 403 Sterling.

The Court had no doubt that the act extended to Scotland. Neither was this a new case, having formerly occurred between Straiton and the Magistrates of Montrose, 28th January 1743, See APPENDIX.; and again, Mouat against the Town of Edinburgh, June 19th 1765, No 17. p. 13176. The only question was, to what extent damages could be here awarded; on whom they were leviable; and by what mode the sum found due was to be assessed; As to which, upon the authority of the above precedents, and it being farther observed on the Bench, that penal statutes operating against innocent persons for the offences of others, are not to be extended beyond their precise words,

The Court pronounced the following judgment:

"THE LORDS find it averred by the pursuer, and not denied by the defenders, That, at the time libelled, a great number of persons, amounting to several hundreds, being unlawfully, riotously, and tumultuously assembled, to the disturbance of the public peace, did repair to the house of Mylnfield in the county of Perth, belonging to the pursuer, and having forcibly entered the said house, did unlawfully and with force, demolish and pull down part of the said house; and find it averred by the pursuer, and ascertained by the report of tradesmen, and not objected to by the defenders, that the pursuer did there-

by sustain damage to the extent of L. 79: 19s. Sterling; therefore, and in terms of the act 1st Geo. I. libelled on, find the defenders, the householders residing within the county of Perth, liable, conjunctly and severally, in the said sum to the pursuer; decern againt them, or any two of them, for payment accordingly: But find the defenders not liable for the other damages claimed by the pursuer, upon account of furniture destroyed, and otherways; and sist execution against the persons hereby found liable, till the 24th day of July next, in order that the Justices of the Peace of the county of Perth may, betwixt and that time, tax and assess rateably and proportionally, according to their abilities, the whole householders residing within the said county, for and towards payment of the above sum hereby awarded in name of damages."

No 20.

And, by a subsequent interlocutor, the Court decerned for the expenses of process, which the pursuer applied for as a part of his damages, and it was not opposed.

Reporter, Coalston. Act. Nairn, Crosbie. Alt. Sol. Gen. Dundas. Clerk, Gibson.  
Fol. Dic. v. 4. p. 198. Fac. Col. No 156. p. 32.

1776. March 9. FERGUSON and Others *against* FALL.

No 21.

ON the petition of Robert Fall, the Magistrates of Dunbar, by act of council, allowed the petitioner to shut up a narrow street or lane about 20 feet in width, called the Backrow, on his becoming bound to open a new and more commodious street in another direction. Certain of the inhabitants complained, by bill of suspension, of this procedure, as *ultra vires* of the Magistrates. THE LORDS found the Magistrates had sufficient powers, and found the suspenders liable in expenses. See APPENDIX.

Fol. Dic. v. 4. p. 202.

1776. August 8. EARL of EGLINTON and GOVAN *against* CRAIG.

No 22.

By the turnpike-act for repairing the roads leading to Glasgow, the trustees were authorised to build up, or repair by money, the damage done to the fences of proprietors, where they should be broken down by altering the course of the road. The fences of Mr Allison being demolished, the trustees empowered the overseer of the road to re-build them; who, for that purpose, proceeded to quarry stones from the ground of an adjacent farm of Lord Eglington's. Of this procedure the tacksman and landlord both complained, by bill of suspension of a sentence of the Sheriff, who found, that the overseer and trustees had sufficient power, by implication from the terms of the statute. Urged for the complainers, That all laws which authorise encroachments on