

- No 22. private property must be strictly interpresed ; and as the statute does not *per expressum* warrant any such procedure as that complained against, it is therefore illegal and oppressive ; the trustees, if they please, may purchase the stones, but they cannot take them at their own hand. THE LORDS passed the bill of suspension. See APPENDIX.

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

- No 23. 1776. November 21. THOMSON *against* CROMBIE.

THE proprietor of a house within burgh has a right to prevent any contentious proprietor from painting his name or erecting a sign upon it, against his will. See APPENDIX. See No 26. p. 13184.

*Fol. Dic. v. 4. p. 200.*

No 24.

Found that expresses dispatched from the post-office, altho' sent at the request of private parties, are not liable to pay toll.

1779. June 24. JAMES JACKSON *against* WILLIAM URE.

THE turnpike-acts for the roads leading to Glasgow contain the usual clause, declaring that no toll shall be demanded ' for any post-horse carrying the mail ' or packet.' Under the cover of this exemption, private persons sending expresses on their own business, had been in use to obtain a despatch express from the post-office, who claimed an equal right to pass through the turnpikes without paying for his horse, as the post-boy carrying the public mail.

Several of these expresses dispatched from the post-office were stopped, and obliged to pay toll at a turnpike in the neighbourhood of the town. This produced an action before the Sheriff, at the instance of the post-master, against the collector of the toll, for repetition of what had been paid, and for having it declared, that the collectors of the toll-duties cannot, in time coming, ' levy ' any tolls or portage from the horse carrying the mail or packet, or dispatches ' from or to the said post-office of Glasgow with an express mail or packet, in ' terms of the acts of Parliament.'

In the course of the action, the Sheriff ordained the defender to condescend, *imo*, Upon the names and designations of the persons who were stopped, and interrupted in the manner mentioned in the libel ; *2do*, " Specially to set forth, whether they were carrying the public mail or packet, which is regularly sent off at stated times, in the common course of the post-office employment, or a packet dispatched by special express from the post-office, and whether such packet was a government or public packet, upon his Majesty's service, or a private packet sent off at the instance of a private person in regard to private affairs."

The pursuer having declined condescending in terms of the second part of the interlocutor, the Sheriff assolized the defenders, and the cause was brought into Court by advocacy.

*Pleaded* for the pursuer; The words of the act exempting from toll the horse that carries the mail or packet, applies equally to mails that are dispatched occasionally, as to the regular established post. It is of no consequence, whether the dispatch goes upon the business of government, or of private individuals. The transmission is, in both cases, a matter of public service and police; and, if the dispatches in any of these different circumstances are sent agreeably to the regulations of the post-office, they are entitled to the exemption.

*Answered* for the defenders; The common post is established for the public utility, which is a good reason for the exception in its favour; but the act nowhere conferred on post-masters a power of exempting expresses on the private business of individuals from paying toll.—These exemptions differ in no respect from dispatches sent by a private messenger, except that the post-master lends the post-office seal, in order to give the rider the command of horses on the road to facilitate his progress.

The number of these expresses is now considerable; and, when private persons have occasion to send them, and to take the benefit of the public road, it is reasonable they should pay for it. This does not interfere with the accommodation afforded them by the post-office, of commanding horses on the road, which is by no means inconsistent with paying toll.

THE COURT found, " That toll-duties and postage were not exigible by the defenders for the horses dispatched with the mails, packets, or expresses libelled; and therefore, found the defenders liable in repetition to the pursuer of the toll-duties and postages exacted by them for the said horses."

Lord Ordinary, *Kennet.* Act. *Sol. General.* Alt. *Cullen.* Clerk, *Menzies.*

*Fol. Dic. v. 4. p. 198. Fac. Col. No. 80. p. 154.*

1781. November 27. KINLOCH against OGILVIE.

OGILVIE possessed a farm watered by the burn of Kirriemuir. About 15 yards from the bed of this rivulet, he dug pits for steeping flax, in the manufacture of which he traded to a considerable extent. Into these pits the water entered, and issued from them into the rivulet in a continued stream.

Mr Kinloch, a neighbouring heritor, commenced a process against Ogilvie, before the Sheriff of the county, on account of these pits, upon the statutes 1606, c. 13. and 1685, c. 20.; by which it is enacted, ' That in time coming, no person shall lay in lochs or running burns, any green lint, under the pain of 40s. Scots, and a forfeiture of the lint.'