

statute of George I. wherein he called the Magistrates and Town-council, as representing the community, and concluded against them as such for damages.

It was *pleaded* for the defenders, That no action was granted by the statute against them as representing the community; for that, according to the directions thereof, the conclusion ought to have been against the burgh, that is, the inhabitants thereof, who are made liable to make up the damages out of their own pockets; but that the community were not made liable to make up the same out of their common good. *2dly*, No action lay on the statute for any damage sustained by the pursuer, through any part of the grain's being abstracted or damaged, the damage awarded by the act relating only to such as are sustained upon houses or fabrics being demolished, or attempted to be demolished, but did not reach to the damage sustained upon the goods that might be within the said houses.

No 3.
carrying away
grain or goods
out of any
house.

THE LORDS sustained the objection to the pursuer's libel, with respect to the conclusion against the Magistrates; but, upon a reclaiming petition and answers, they repelled the objection; and likewise found no action lay on the statute for damage arising for carrying off grain or other goods out of any house or out-house, but only for the damage done by pulling down such house, &c.

Fol. Dic. v. 4. p. 197. C. Home, No 224. p. 367.

1750. February 24.

ELEMING against URE.

ROBERT FLEMING, printer in Edinburgh, applied by petition to the Dean of Guild, shewing, That Ure, proprietor of a house immediately above one of his, in a close near the Cross, had set the same to a fencing-master, the noise of whose school was such a nuisance, as destroyed the use of his house, which nobody would live in; and thereupon the Dean of Guild having visited the houses, discharged Ure to set his house longer for the said use.

Ure offered a bill of suspension, which the LORDS refused.

Fol. Dic. v. 4. p. 199. D. Falconer, v. 2. No 134. p. 152.

No 4.

1750. July 24. ROBERT HAMILTON against INHABITANTS OF KIRKCALDY.

A COMPLAINT having been insisted in before the Justices of Peace of the shire of Fife, at the instance of Robert Hamilton their overseer of the highways, against certain of the Inhabitants of Kirkcaldy, for not repairing the same; the Justices fined them; of which they offered suspension, and the LORD ORDINARY, on advice, 21st July, "Passed the bill as to those sailors who went upon foreign voyages, or voyages coast-ways; but not as to fishers, or those who

No 5.
Inhabitants of
a royal burgh
are not ex-
empted from
working on
the highways.

No 5. were boatmen or sailors in the passage-boats; and refused the bill as to the rest of the suspenders.

Pleaded in a reclaiming bill, By act 16th Sess. 1. Parl. 2. Car. II. the persons bound to work at the roads, are tenants, cottars, and their servants, who are to bring their horses, carts, instruments, &c. but not inhabitants of royal burghs; and by the act 5to Geo. I. whereby the laws of Scotland for that purpose are confirmed, it is the tenants, cottars, or labouring men, that are in the country; for it is only upon the landed interest that the assessment by that act is allowed to be laid, in case the labour of the inhabitants shall not be sufficient; neither are the Magistrates of burghs empowered to meet with the Justices, nor have any concern in directing the mending of roads.

Many of the petitioners are in no sense labouring men; they are merchants, vintners, &c. and the rest tradesmen, but not used to work with the spade and shovel.

When the cause came in first, the Justices declared they were not to litigate the point, but to submit to the judgment of the Court, having done what they thought right.

Observed, That inhabitants of royal burghs were not excepted; and the only question was, Whether the petitioners were of characters that would exempt them, if they lived in the country; and that a country man would not be exempted, though he sold trifles, and called himself merchant?

Observed also, The suspension was of a decree of a petty session, without appealing to the quarter-sessions, for which the bill ought to be refused; and it was proposed to refuse, reserving to the petitioners to apply to the quarter-sessions; but on the question,

THE LORDS simply refused.

Pet. Lockhart.

Fal. Dic. v. 4. p. 200. D. Falconer, v. 2. No 153. p. 177.

1754. February 15.

VISCOUNT OF ARBUTHNOT and OTHERS, *against* THE JUSTICES of the PEACE for COUNTY of KINGARDINE.

No 6:

Justices of Peace may apply the statute work in the county for the reparation of one highway, and may permit those who live at a distance from

THE Justices of the Peace for the county of Kincardine made an order, that the six days work for the highways of all the tenants, cottars, and other labouring men within the county, should be applied, in the first place, for the repairing of one highway; and they permitted those who lived at a distance from that highway, to compound at a rate below the legal composition.

The Viscount of Arbuthnot and others presented a bill of suspension of this order, and *pleaded*; That the Justices had therein exceeded the powers given