

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

them by law; for that the act 16th Parl. 2. Sess. 1. Charl. II. ordains the Justices "to divide the parishes of their bounds, as they lie most ewest to the highways to be repaired, and as they may have the most equal burden;" and the meaning of this regulation is, that the highways be repaired by the inhabitants of the nearest parishes, and by them only; not that all who are bound to perform the six days work may be called out from one extremity of the county to the other. Such extension of the law would, in the county of Kincardine, prove a heavy burden; and in more extensive counties, an intolerable grievance. And if the tenants and others be not obliged in law to perform the six days work on distant roads, they cannot, in case of failure, be obliged to compound.

*Answered* for the Justices of the Peace; The order of the Justices may be supported both from the words and the spirit of the laws respecting the reparation of the highways; for that the act 9th Parl. 2. Sess. 2. Charl. II. permits the Justices to accept of a certain composition in lieu of the six days work, "where the ways lie at a great distance from those who are liable to repair the same;" which words imply, that the persons bound by law to work at the reparation of the highways, may be called to such work from any distance whatever. And this is further explained by the act 5th Geo. I. cap. 29. which, by providing that the tenants, &c. be called out on such days and "at such places as the Justices shall appoint," lodges a discretionary power with the Justices; this power has, in the present case, been exercised with moderation; and persons residing at a distance have been allowed to compound at a rate even below that which is established by statute. Further, the purpose of the acts aforesaid was, that the highways throughout the kingdom might be repaired in the manner least grievous to the people. Now by this, the Legislature could not mean that the highways should be repaired by calling out the tenants, &c. for the repairing of the roads within their respective parishes; for such method is unequal, expensive, and unsuccessful; it is unequal, for that in order to repair the highways within one parish, the country services may be more than sufficient, within another, less; it is expensive, as many overseers must be paid when various roads are repaired at once; and how unsuccessful it is, the experience of all Scotland has demonstrated. On the other hand, if the country services be applied for the reparation of the highways successively, their use may at length be in a great measure superseded, and the people relieved of this burden.

"THE LORDS refused the bill of suspension."

For the Suspenders, *Brown, Lockhart.*

Alt. *J. Grant, R. Dundas.*

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*Fol. Dic. v. 4. p. 201. Fac. Col. No 99. p. 148.*

No 6.

such highway to compound at a rate below the statutable composition.