

No 10.

But although such exemption were to have been sustained upon the general statutes, it cannot upon the particular statute 26<sup>to</sup> Geo. II. Householder, in common speech, implies one who possesses a house; and were it to be restricted to the sense for which the suspenders plead, it would be a superfluous word, for persons residing in the country could pretend to no exemption before that act passed. A householder within the county, must comprehend a householder in Perth; for whenever the law means to distinguish between boroughs and the rest of the county, it marks the distinction. Thus, in the jurisdiction act, jurisdictions competent to royal boroughs are expressly excepted; but when this distinction is not made, county or shire includes borough; as in the act 2. Parl. 2. Cha. II. establishing a militia; and in the 39<sup>th</sup> act, 19 Geo. II. 'for the more effectually disarming the Highlanders,' the cess of the county is distinguished from the cess of the borough, because the law imposes a certain proportion of the cess upon the boroughs, distinct from what is imposed on the counties. Besides, if county, in the 26<sup>to</sup> Geo. II. did not include royal boroughs, 'the principal Magistrates of each royal borough within these bounds, of the counties of Perth and Fife,' could in no reason have been appointed Trustees for the execution of the act.

THE LORDS found the suspenders liable in the statute-work of the turnpike-road in question.

Reporter, *Bankton.* For the Suspenders, *J. Craigie, Advocatus.* Alt. *Lockhart, Ferguson.*  
*W. J.* *Fol. Dic. v. 4. p. 200.* *Fac. Col. No 78. p. 136.*

\* \* \* This case was appealed:

THE HOUSE of LORDS, 10<sup>th</sup> April 1757, ORDERED and ADJUDGED, that the appeal be dismissed, and that so much of the said interlocutor as is therein complained of, (viz. that which found the householders of the burgh of Perth liable in the statute work of the turnpike roads), be affirmed.

1758. *January 11.*

TRUSTEES of GLASGOW TURNPIKE ROAD *against* INHABITANTS of the Town of PAISLEY.

No 11.

The whole inhabitants of a borough may be called out to repair high-ways.

SOON after the decision in the question betwixt the Trustees of the Perth turnpike roads and the Inhabitants of Perth, (*supra*), in which these last had *pleaded*, That no inhabitant whatsoever of a royal borough, or borough of regality, could be called out to repair the high-roads, and in which the Court had found "the inhabitants, suspenders, liable in the statute work of the turnpike road in question," the trustees of the Glasgow turnpike ordered out several artificers and tradesmen of the town of Paisley, to amend the turnpike leading through Renfrewshire to Glasgow.

In a suspension of these orders, brought by these tradesmen and artificers, the LORDS found, "That the whole inhabitants of the town of Paisley may be called out to repair the high-roads in time coming."

The suspenders reclaimed. They did not insist for a general exemption of the inhabitants within the borough; on the contrary, they yielded, that labouring-men, or people used to country-work, even though living in a borough, might be called out; and in so far they acquiesced in the decision pronounced in the case of Perth.

But they *pleaded*, That merchants, artificers, tradesmen, and all others living within a borough who did not come under the description of labouring-men, tenants, cottars, or their servants, were not liable in the statute-work; and, at any rate, insisted, That the word inhabitants, in the interlocutor, was by far too general, as the law could never mean to put it in the power of the trustees to call out peers, judges, clergymen, women, &c. to the high-roads.

With regard to artificers and tradesmen, the trustees *answered* by repeating the arguments which had been used against these classes of men in the case of Perth.

And as to those in higher stations of life, whom it was alleged the interlocutor would authorise the trustees to call out, it was *answered*, That there were none of them called out by the orders suspended; and if they should afterwards be called out, there was nothing in the present decision (which regarded not a case in which they were parties) to hinder them to offer a suspension, and get redress, if redress was due to them.

“THE LORDS adhered, and refused the petition; reserving to the inhabitants, or any class of them who shall think themselves aggrieved, to apply for redress, as accords.”

Suspenders, *A. Pringle.*                      Chargers, *Ferguson.*

*J. D.*

*Fol. Dic. v. 4. p. 201. Fac. Col. No 84. p. 148.*

\* \* Lord Kames reports this case :

By the act 1617, cap. 8. § 8. “the Justices of Peace are empowered to give order as they shall think most convenient, and with least grief to the subjects, for mending all highways, &c.” And after giving directions with respect to the breadth of highways, it is added, “And if any person refuse to concur for mending highways, the said Justices shall censure and punish them according to their discretion.” As no particular class of persons is named here, it seems the meaning of the statute, that every person, high and low, rich and poor, should concur, the labourers by their work, and others by their money. In the later statutes, tenants, cottars, and their servants, are only named; because probably when there was no commerce, and public roads little frequented, these persons were deemed sufficient to make all the repairs necessary. But the statute first mentioned is not abrogated by the later statutes; and therefore, since it is found by experience, that the tenants, cottars, and their servants, are not sufficient to put high-roads in repair, which are now much frequented by the increase of commerce, it follows, that the act 1617 ought to be

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put to execution, which was done by calling out certain inhabitants of the burgh of Paisley, among others in the county ; and this case being brought before the Court of Session by suspension, the Court found that the inhabitants of the town of Paisley may be called out to repair the high-roads.

*Sel. Dec. No 140. p. 196.*

No 12.

In boroughs, one may build as near the march as he pleases, providing no drop falls upon his neighbour.

1760. July 8.

CLARK *against* GORDON.

CLARK and Gordon had contiguous houses in the town of Kirkcudbright, with back yards extending behind each of them. Gordon had an old kitchen behind his house, built close upon the march betwixt the two yards. Clark, in the year 1755, built on his side a coal-house, the side-walls of which almost touched the wall of Gordon's kitchen. At the same time he also built an house of office, opening towards his own yard, the back wall of which came within about eighteen inches of Gordon's kitchen. Gordon thereafter pulled down his kitchen, and built it up a-new, in a better form, with more windows, towards Clark's yard ; and he thereupon brought a process before the Magistrates of Kirkcudbright, insisting, That Clark should be decerned to remove both his coal-house and house of office, as being built too near the wall of his kitchen. The Magistrates ordained both these houses to be pulled down ; and Clark suspended.

*Pleaded* for Gordon ; *imo*, With regard to the coal-house, That there must always be some space betwixt contiguous houses, which is regulated by the customs of particular boroughs : That in Kirkcudbright it is fixed at eighteen inches : That the coal-house in question touches the wall of the kitchen.

*Answered* for Clark ; That Mr Gordon never interrupted him when building his coal-house ; and therefore that it is too late to insist upon having it pulled down. Besides, as the coal-house is built with a shade-roof, sloping towards Clark's own yard, no drop can fall from it ; nor can it be in the smallest degree prejudicial to Mr Gordon's property.

*2do*, With regard to the house of office, it was *pleaded* for Gordon, That although every man may use his property in what manner he pleases, yet he must not do it *in emulationem vicini* : That there were many other more convenient places in Clark's yard, where such a house might be built : That it was offensive, and a very great nuisance to Mr Gordon.

*Answered*, That every man may build upon his own ground what houses he thinks proper, though they should be hurtful to his neighbour, unless he has a servitude.

" In regard Clark was not interrupted when building his houses, as the coal-house was built in such a form as that the easing-drop could not prejudice the