

1768. July 27. WILLIAM RALSTON *against* GAVIN PETTICREW.

PROPERTY.

One must not use one's Property so as to destroy any thing belonging to a Neighbour.

[*Faculty Collection, IV. p. 141 ; Dictionary, 12,808.*]

MONBODDO. *Nemo potest immittere in alienum* ; but, if there is no servitude, one may build upon his own ground, though to the manifest prejudice of his neighbour. The question here is, Whether is the pursuer hurt ? From the proof, I must conclude that he is.

PITFOUR. I always thought that the rule of the civil law was right ; and it is as just now laid down.

ALEMORE. As to immitting smoke, there is no help for it ; but here a real damage is done.

HAILES. The case *Fraser against Dewar*, mentioned by the defender, does not apply ; for *there* the limekiln was built *in prædio rustico*. And, besides, Dewar proved that there was no place upon his ground where the limekiln could be built, unless that where it was built. So that the work was not only free from the exception of being done *in æmulationem*, but appeared to be erected from necessity ; and Dewar had no choice but either to erect his limekiln where he did, or relinquish his undertaking altogether.

COALSTON. When I send into my neighbour's ground any thing that hurts the health of the inhabitants, or the cattle, or the vegetables, then it must be stopped.

AUCHINLECK. There is a place for every thing. Noisome works ought not to be erected in such a way as to be hurtful to the neighbourhood. Many things may be nuisances in and near towns, which are not so in the country.

On the 27th July 1768, the Lords, in respect of the real damage occasioned to Ralston, found that the brick-kilns must be removed, altering Lord Gardenston's interlocutor.

On the 25th November 1768, they adhered.

*Act. A. Lockhart. Alt. A. Crosbie.*

1768. August 4. MRS FLORENCE M'LEOD *against* MR JOHN NICOLSON.

[*Faculty Collection, IV. p. 138 ; Dictionary, 14,946.*]

PERSONAL AND TRANSMISSIBLE—SUCCESSION.

An Annuity, assigned to a Husband in a contract of marriage, transmits to his Heirs, though Heirs are not mentioned.

MONBODDO. The question is, Whether is this a *personale pactum*, limited to