

* * * This case was appealed :

No 34.

The House of Lords, 20th February 1782, ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutors complained of, be affirmed.

1791. November. MILLER *against* STEIN.

No 35.

MILLER of Dalswinton bought the lands of Southfield, through which there runs a small stream of clear water fit for family uses; the banks of which Mr Miller planted and ornamented at considerable expense, and supplied a cold bath from the water. Stein having purchased a brewery in the neighbourhood, which had lain for some time unoccupied, converted it into a distillery, the refuse of which running into the stream rendered it putrid, and unfit for the use of man or beast, besides entirely destroying its amenity. Miller having presented a bill of suspension and interdict, Stein *urged* in defence, That the refuse of his distillery was not of a poisonous quality; that as superior heritor, he had a right to use the stream for any lawful purpose, which the present certainly was; and he *contended* moreover, That the distillery having been erected long before Mr Miller's house was built, he had come to the nuisance, and not the nuisance to him. THE LORDS were of opinion, That the primary use of water being to drink, no proprietor was entitled to employ the water passing through his ground in any purposes which could defeat that primary use to others who had before enjoyed it; they therefore passed the bill, and continued the interdict which had been granted by the Lord Ordinary. See APPENDIX.

Fol. Dic. v. 4. p. 173.

1791. November. RUSSELL *against* HAIG.

No 36.

RUSSELL of Roseburn brought an action against Haig, distiller at Lochrin, in the suburbs of Edinburgh, on the ground, that the refuse-water from that distillery running into a rivulet, which in its course passes through the pursuer's grounds, brought down a mass of filth, which rendered the water formerly used for domestic purposes, and by cattle, totally unfit for these uses, and tainted even the air in its vicinity. *Urged* in defence, It is not alleged that the water itself, issuing from this distillery, was a nuisance. The fact was, That the rivulet in question was nothing else than the draining of the common sewers from the south suburbs of Edinburgh, of which the filth had formerly