

the reported cases, 20th June 1799, Anderson against Dalrymple, No. 41. NO. 3.
p. 12831. ; and 16th November 1799, Reid against Nicol, No. 1. *supra*.

The Court, upon the principle there adopted, altered the interlocutor, and gave judgment against Mrs Sharp.

Lord Ordinary, *Stonefield*.
Clerk, *Sinclair*.

For Sharp, *Greenshields*.

Att. *T. W. Baird*.

D. D.

Fac. Coll. No. 164. p. 368.

1800. *June 24.*

WILLIAM JAMESON and Others, against ANTHONY and THOMAS HILLCOATS and Others.

NO. 4.

ABOUT 1783, a company of manufacturers of Prussian blue, near Newcastle-upon-Tyne, instituted, upon the lands of Figgot, within two or three hundred yards of the village of Portobello, and not far from the junction of the roads from Edinburgh, Leith and Musselburgh, on the one side, and the sea-shore on the other, a work for the preparation of blood, by boiling, or roasting, as an ingredient in their manufacture ; and for this purpose purchased the whole blood from the shambles of Edinburgh.

The preparation of blood as an ingredient in the manufacture of Prussian blue, prohibited, as a nuisance, in certain circumstances.

Not long after this operation had been begun, William Jameson and other proprietors at Portobello, complained of the smell emitted from it, as a nuisance, by an action before the Sheriff. The Magistrates of Edinburgh and Procurator-fiscal made a similar complaint.

The Sheriff pronounced an interlocutor, by which he declared, that he would not order the work to be removed, provided the proprietors of it would erect a building for carrying it on, of the shape and height of the highest glass-house at Leith; by which means he supposed the offensive smell would be removed.

The pursuers advocated the cause to the Court of Session, where it was allowed to fall asleep about 1788, without any judgment being given on the merits.

The work was carried on with little intermission till 1798, and without the building suggested by the Sheriff being erected. By this time Anthony and Thomas Hillcoat had acquired right to the blood-work, which was conducted for behoof of the proprietors of a manufacture of Prussian blue, near Berwick. And William Jameson, and other proprietors at or near Porto-

NO. 4. bello, most of whom, except Jameson, had acquired their rights since the blood-work was first begun, presented a bill of suspension and interdict, praying that the work should be prohibited as a nuisance, prejudicial to health and comfort, and which was placed in a situation particularly incommodious, from the offensive smell being constantly felt, according to the direction of the wind, by passengers on the sands and public roads, and the inhabitants of Portobello, which was much resorted to for sea-bathing.

The other party denied that the manufacture occasioned any nuisance. In evidence of this, they stated, that similar manufactures were common in the neighbourhood of Newcastle, and other large towns in England; and, at any rate, they contended, that it was a legal exercise of property, of which the suspenders had no right to complain; 20th January 1767, Dewar against Fraser, No. 27. p. 12803., particularly as Mr Jameson, who had himself an offensive brick and tile work in the neighbourhood, had deserted the former action, and most of the other complainers had acquired their properties subsequent to the erection of the blood-work.

A proof was allowed as to the allegation of nuisance, and of the existence of similar works in or near great towns in England.

From the proof, it appeared, that the smell from the blood-work was extremely offensive; felt at a considerable distance all around, according to the direction of the wind, and was prejudicial, if not to the health, certainly to the comfort of the neighbourhood.

It likewise appeared, that there were similar works in the neighbourhood of Newcastle, and in the towns of North and South Shields.

After a hearing in presence, on a prepared State, the Court was clear, that the smell from the operation complained of, was very disagreeable; but difference of opinion was entertained with regard to the legal grounds for removing the work. On the one hand, it was observed, Every question of nuisance must depend on its own circumstances; and it is difficult to draw the line between the legal uses of property, and the obligation not to injure our neighbour in the exercise of it. All circumstances considered, the present situation seems commodious for the operation in question, which can only be conducted in the neighbourhood of large towns, where they are tolerated in England. Most of the present complainers have come to the nuisance, and therefore cannot complain of it.

But a majority of the Court thought, that the work ought to be prohibited, unless some mode could be found of preventing the nuisance resulting from it. The proprietors in the neighbourhood, when it was first erected, (it was observed), had a clear right to have it removed. Indeed, the evil is of such magnitude, that the Procurator-fiscal ought to have complained

of it, as the village and sands are *inter gaudia* of the inhabitants of Edinburgh. Many other situations, equally commodious for the work, might have been obtained, where it would not have been offensive; and, at any rate, comfort is not to be sacrificed to manufactures, making every allowance for their importance.

The Lords found it proved, that “the blood-work in question is a nuisance, and ought to be removed from that place, or discontinued; and therefore suspended the operation complained of.”

A petition, craving that the interlocutor should be so qualified as to give the chargers an opportunity of adopting some cure for the nuisance, which might supersede the removal of the works, was (8th July) refused, as unnecessary.

Lord Ordinary, *Justice-Clerk.*
Alt. *C. Ross.*

Act.
Clerk, *Gordon.*

D. D.

Fac. Coll. No. 187. p. 424.

1800. *July 1.*

Colonel AYTOUN, *against* Colonel DOUGLAS and ROBERT BIRREL.

THE Leven, in Fifeshire, separates the lands of Achmuir from those of Strathendry.

In 1787, Colonel Douglas, proprietor of the latter, let the lands on his side to Robert Birrel, for a bleachfield. Birrel new-modelled and added a little to the height of a dam-dike across the river, which the proprietors of Strathendry had, for time immemorial, used for the purpose of catching eels, their titles giving them right to eel-cruives.

The eels had formerly been caught at an opening in the dike, without taking any part of the water out of the channel; but Birrel now made two cuts from the river, considerably above the dam-dike, for the purpose of his bleachfield and machinery, and the water was returned below the dam-dike, opposite to the lands of Auchmuir.

Notwithstanding these cuts, the effect of the alterations on the dam-dike was to raise the water above it; and the tenant of Auchmuir estimated the damage done to his lands by these means, as not exceeding a shilling

NO. 5.

When a stream of water is the boundary between two opposite proprietors, the right of either to object to alterations on the channel of it, is cut off, when in consequence of homologation matters are no longer en-tire.