

statute of George I. wherein he called the Magistrates and Town-council, as representing the community, and concluded against them as such for damages.

It was *pleaded* for the defenders, That no action was granted by the statute against them as representing the community; for that, according to the directions thereof, the conclusion ought to have been against the burgh, that is, the inhabitants thereof, who are made liable to make up the damages out of their own pockets; but that the community were not made liable to make up the same out of their common good. *2dly*, No action lay on the statute for any damage sustained by the pursuer, through any part of the grain's being abstracted or damaged, the damage awarded by the act relating only to such as are sustained upon houses or fabrics being demolished, or attempted to be demolished, but did not reach to the damage sustained upon the goods that might be within the said houses.

THE LORDS sustained the objection to the pursuer's libel, with respect to the conclusion against the Magistrates; but, upon a reclaiming petition and answers, they repelled the objection; and likewise found no action lay on the statute for damage arising for carrying off grain or other goods out of any house or out-house, but only for the damage done by pulling down such house, &c.

*Fol. Dic. v. 4. p. 197. C. Home, No 224. p. 367.*

1750. February 24.

ELEMING against URE.

ROBERT FLEMING, printer in Edinburgh, applied by petition to the Dean of Guild, shewing, That Ure, proprietor of a house immediately above one of his, in a close near the Cross, had set the same to a fencing-master, the noise of whose school was such a nuisance, as destroyed the use of his house, which nobody would live in; and thereupon the Dean of Guild having visited the houses, discharged Ure to set his house longer for the said use.

Ure offered a bill of suspension, which the LORDS refused.

*Fol. Dic. v. 4. p. 199. D. Falconer, v. 2. No 134. p. 152.*

1750. July 24. ROBERT HAMILTON against INHABITANTS OF KIRKCALDY.

A COMPLAINT having been insisted in before the Justices of Peace of the shire of Fife, at the instance of Robert Hamilton their overseer of the highways, against certain of the Inhabitants of Kirkcaldy, for not repairing the same; the Justices fined them; of which they offered suspension, and the LORD ORDINARY, on advice, 21st July, "Passed the bill as to those sailors who went upon foreign voyages, or voyages coast-ways; but not as to fishers, or those who

No 3.

carrying away  
grain or goods  
out of any  
house.

No 4.

No 5.

Inhabitants of  
a royal burgh  
are not ex-  
empted from  
working on  
the highways.