

liament, and joined issue and went to proof only on the actual transgression. And having failed in this proof, the Lords, in a suspension, "found that Leckie was not now at liberty to insist upon any conclusion on the Act of Parliament; and suspended the letters." The Sheriff had decerned on the Act, and on the legal presumption.

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1776. July . PATRICK BELL *against* The MAGISTRATES of GLASGOW.

IN the interpretation of the statute of Charles the II. concerning half-dyke, the Court have entered into equitable considerations, and have refused to extend it to the proprietors of stripes of ground where the expense of inclosing would be great and the advantage little. So they have decided in several cases; and in a case which occurred, — July 1776, betwixt Patrick Bell and the Magistrates of Glasgow, this was held to be law. In this case the Magistrates, intending to inclose a field, to the north of the Green of Glasgow, were opposed by Bell, as having right to a stripe of ground, in all about one-fourth of an acre, a *riga vel roda terræ* running through it, and making a communication betwixt his property of Bellshaugh and the highway. This stripe was his property, and, though commonly used as a road, had sometimes been used for other purposes. The Magistrates offered to inclose this stripe of ground provided he was at the expense of half-dyke, and to turn their field into two inclosures instead of one. This he declined on the footing of the equitable construction of the statute, as already mentioned; and this was held to be so. They then proposed either a gate with a key, or a flying gate and a stile for foot passengers: Bell refused both. The Sheriff ordained him to take his choice of the two; and in an advocacy, the Lord Auchinleck, Ordinary, 31st January 1776, remitted the cause *simpliciter*; and, — July 1776, the Lords adhered. They considered that he who sought equity ought to give it. They considered the stripe chiefly in the light of a road, for which indeed it had generally been used, or could well be used with any propriety, and the opposition appeared *in æmulationem*; so it was entitled to no favour.

N.B. In a reclaiming petition for Bell, which was refused, without answers, it was set forth, that the stripe of ground held burgage, so at any rate did not fall under the statute 1661.

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