

by sustain damage to the extent of L. 79: 19s. Sterling; therefore, and in terms of the act 1st Geo. I. libelled on, find the defenders, the householders residing within the county of Perth, liable, conjunctly and severally, in the said sum to the pursuer; decern againt them, or any two of them, for payment accordingly: But find the defenders not liable for the other damages claimed by the pursuer, upon account of furniture destroyed, and otherways; and sist execution against the persons hereby found liable, till the 24th day of July next, in order that the Justices of the Peace of the county of Perth may, betwixt and that time, tax and assess rateably and proportionally, according to their abilities, the whole householders residing within the said county, for and towards payment of the above sum hereby awarded in name of damages."

No 20.

And, by a subsequent interlocutor, the Court decerned for the expenses of process, which the pursuer applied for as a part of his damages, and it was not opposed.

Reporter, Coalston. Act. Nairn, Crosbie. Alt. Sol. Gen. Dundas. Clerk, Gibson.
Fol. Dic. v. 4. p. 198. Fac. Col. No 156. p. 32.

1776. March 9. FERGUSON and Others *against* FALL.

No 21.

ON the petition of Robert Fall, the Magistrates of Dunbar, by act of council, allowed the petitioner to shut up a narrow street or lane about 20 feet in width, called the Backrow, on his becoming bound to open a new and more commodious street in another direction. Certain of the inhabitants complained, by bill of suspension, of this procedure, as *ultra vires* of the Magistrates. THE LORDS found the Magistrates had sufficient powers, and found the suspenders liable in expenses. See APPENDIX.

Fol. Dic. v. 4. p. 202.

1776. August 8. EARL of EGLINTON and GOVAN *against* CRAIG.

No 22.

By the turnpike-act for repairing the roads leading to Glasgow, the trustees were authorised to build up, or repair by money, the damage done to the fences of proprietors, where they should be broken down by altering the course of the road. The fences of Mr Allison being demolished, the trustees empowered the overseer of the road to re-build them; who, for that purpose, proceeded to quarry stones from the ground of an adjacent farm of Lord Eglington's. Of this procedure the tacksman and landlord both complained, by bill of suspension of a sentence of the Sheriff, who found, that the overseer and trustees had sufficient power, by implication from the terms of the statute. Urged for the complainers, That all laws which authorise encroachments on

- No 22. private property must be strictly interpresed ; and as the statute does not *per expressum* warrant any such procedure as that complained against, it is therefore illegal and oppressive ; the trustees, if they please, may purchase the stones, but they cannot take them at their own hand. THE LORDS passed the bill of suspension. See APPENDIX.

Fol. Dic. v. 4. p. 202.

- No 23. 1776. November 21. THOMSON *against* CROMBIE.

THE proprietor of a house within burgh has a right to prevent any contentious proprietor from painting his name or erecting a sign upon it, against his will. See APPENDIX. See No 26. p. 13184.

Fol. Dic. v. 4. p. 200.

No 24.

Found that expresses dispatched from the post-office, altho' sent at the request of private parties, are not liable to pay toll.

1779. June 24. JAMES JACKSON *against* WILLIAM URE.

THE turnpike-acts for the roads leading to Glasgow contain the usual clause, declaring that no toll shall be demanded ' for any post-horse carrying the mail ' or packet.' Under the cover of this exemption, private persons sending expresses on their own business, had been in use to obtain a despatch express from the post-office, who claimed an equal right to pass through the turnpikes without paying for his horse, as the post-boy carrying the public mail.

Several of these expresses dispatched from the post-office were stopped, and obliged to pay toll at a turnpike in the neighbourhood of the town. This produced an action before the Sheriff, at the instance of the post-master, against the collector of the toll, for repetition of what had been paid, and for having it declared, that the collectors of the toll-duties cannot, in time coming, ' levy ' any tolls or portage from the horse carrying the mail or packet, or dispatches ' from or to the said post-office of Glasgow with an express mail or packet, in ' terms of the acts of Parliament.'

In the course of the action, the Sheriff ordained the defender to condescend, *imo*, Upon the names and designations of the persons who were stopped, and interrupted in the manner mentioned in the libel ; *2do*, " Specially to set forth, whether they were carrying the public mail or packet, which is regularly sent off at stated times, in the common course of the post-office employment, or a packet dispatched by special express from the post-office, and whether such packet was a government or public packet, upon his Majesty's service, or a private packet sent off at the instance of a private person in regard to private affairs."