

PUBLIC POLICE.

1497. *November 14.* PATRICK COCKBURN *against* ALEXANDER RAMSAY.

No 1.

GIF ony persoun biggis ony housis or tenementis upon the commoun streit, within ony of the King's burghis, the samin aucht and sould pertene to the King's Hienes, as eschete throw purpresture, and may be gevin and disponit be him to ony persoun as he pleisis.

Fol. Dic. v. 2. p. 294. Balfour, (PURPRESTURE.) p. 442.

1724. *July 21.*

The TENANTS of LIBERTON, NEWTON, and LASWADE, *against* The JUSTICES of the PEACE of the SHIRE of MID LOTHIAN.

No 2.

UPON application to the said Justices, Mr Baird, younger of Newbyth, was authorised to inclose a piece of ground through which the highway passed, and to cast about that old way, upon his repairing and making good a new one upon his own charges, with the assistance of the Tenants of that and the neighbouring parishes, for carrying the materials to lay the same; he thereafter obtained a warrant from the quarter-sessions to a *quorum* of their number, to cause call out the adjacent Tenants of Libberton, Newton, and Lasswade, to be assistant in the said work, and to grant warrant for poinding them in case of refusal, conform to act of Parliament.

Where an heritor had cast about a highway for his own benefit; found the Justices could not call out the tenants, &c. to assist at making it.

The Tenants raised suspension of these proceedings upon the following grounds, *imo*, Without an express act of Parliament, no person could cast about an highway; and therefore he who has the benefit of it, ought certainly

No 2. to be at the expenses of doing the thing; *2do*, If the act 1661 had intended any such encouragement as this, it would have certainly expressed it, as it does in other cases, where the burdening of neighbours was under view; for example, where inclosures fall to be upon marches, the next adjacent heritor is to be at equal pains and charges; *3tio*, In the foresaid act there is the following clause; "and where there are liferenters upon lands, the same shall be done upon the equal charge of the liferenter and heritor; and in case of proper wadsets, the charges shall be added to the reversion;" which clause, although it concerns the expenses of inclosures in general, yet it must likewise relate to the charges of casting about the highway, as a consequential part of the expenses of inclosing, especially when the clause anent the highway immediately precedes it.

It was *argued* for the Justices; That the old way stood in need of repair, and would have wanted double the assistance from the suspenders that was appointed for the new, and therefore the Justices' warrant was rational and just; *2do*, By acts of Parliament the Justices of Peace are empowered to change the highways, and remove them entirely from one place to another, and to oblige the Tenants and possessors to the same carriages towards making the new way, that they have done in the present case; and therefore the suspenders had no reason to complain.

It was *answered* for the suspenders to the *first*, That the accidental bad condition of the highway could never entitle the inclosing heritor to the assistance of the neighbouring Tenants, there being nothing provided in the law to that purpose. And to the *second* it was *answered*, That the Justices may have power to alter roads for the public benefit, and to call for the assistance of the neighbours to such alterations; but there is no reason why such a burden should be thrown upon them, when the alteration is for the benefit and advantage of a private person.

It was farther *alleged* for the Tenants, That the work being already done, their assistance could not now be required.

THE LORDS suspended the letters, and assoilzied the Tenants.

Reporter, *Lord Kimmergham*.
Alt. *Sir Ja. Stewart*.

For the Suspenders, *And. Macdowal*.
Clerk, *Dalrymple*.

Fol. Dic. v. 4. p. 200. Edgar, p. 96.

No 3.
No action lies on the statute George I. entitled an act for preventing tumults, &c. for forcibly

1743. *January 28.*

Colonel STRATON *against* The MAGISTRATES and TOWN-COUNCIL of MONTROSE.

IN the year 1741, a great many of the inhabitants of Montrose, having broke into some ginnels belonging to Colonel Straton within the said town, and taken a considerable quantity of meal therefrom, he brought an action on the