

No. 9. 1748, Dec. 17. LEITH and LESLY *against* MAGISTRATES OF ABERDEEN, &c.

A SOAPERY of white soap being intended to be erected in Aberdeen, the neighbouring heritors complained to the Magistrates, because of the danger of fire and nauseousness of the smell, and they stopped the work. And a bill of suspension being offered of that sist, and likewise a reduction, I upon report refused the bill. And on a reclaiming bill, the Lords once adhered;—but on a reclaiming bill we remitted to Messrs Oswald and Boyle at Glasgow to report to us whether such a soapery was either dangerous to the neighbourhood for fire, or nauseous in the smell of the lees, or otherwise, and they reported it was not;—and thereupon we passed the bill, and allowed the work to proceed.

No. 10. 1749, June 14. TURNER *against* DUKE OF ROXBURGH.

As the Justices of Peace have power to cast about a highroad 200 yards for the benefit of inclosures, the question was, Whether where there are two roads, both highways within 200 yards of each other, they can suppress one of them? In this case, the two roads lead one to a boat, another to a ford. 2dly, Whether when the highroad is cast about, the whole new road must not be on the same heritors ground? We had, 15th February, found that they could not suppress one of the roads, by throwing one into another. And this day we adhered.

No. 11. 1750, July 21. INHABITANTS OF KIRKALDY.

MURKLE reported a bill of suspension for 40 or 50 inhabitants of Kirkaldy, of a sentence of the Justices, suing them for not attending to repair the highroads, in terms of the act 5th Geo. II. for that they were inhabitants of a Royal Burgh, and not comprehended in that act. The Justices would not answer, but left it to the Court. And we repelled that general reason that they were a Burgh Royal; but passed it as to sailors employed in navigating ships in trade, and refused it as to sailors employed in passage-boats, and as to merchants, weavers, tailors, and other trades people. And upon a reclaiming bill 24th July we refused.

No. 12. 1754, Feb. 12. INHABITANTS OF KINCARDINESHIRE.

THE Commissioners of Supply, in order to repair the roads in their county, had divided them into four great roads, and finding by experience that taking only the inhabitants in the neighbourhood to make or repair such roads was altogether ineffectual, resolved to repair these roads one after another, so as one should be finished and made sufficient before beginning to another, and to take the work of the whole county to such. But being sensible of the inconveniency and hardship of bringing tenants to a very great distance, at the same time that for a very little money people might be hired that would do the work more effectually, they put it in their power to redeem their own service at a low rate, 1d. *per diem* for every man, and as much for every horse, except the inhabitants in the neighbourhood of the road to be repaired, and accordingly made an act for

enforcing these purposes; which Lord Arbuthnot and other heritors and tenants endeavoured to suspend, chiefly on two grounds; first that it was not made on the third Tuesday of May, in terms of the act 5th Geo. I.; 2dly, that they could not oblige tenants to repair roads at a distance. Answered to the first; By the act 1669, the first Tuesday of May is the day appointed, which is not repealed but ratified by the act 5th Geo. I., and is the usual day when the roads are ordered, being commonly the day of choosing the collector. To the second, That it would be oppressive to oblige tenants to repair roads at a distance, while there were others repairing that lay nearer; but none of the acts limited them not to call the tenants, but what lay near them, or that lay at any certain distance; and such a limitation would be unjust and unreasonable, and in many counties render the repairing the roads impracticable. The different bills of suspension were refused by two different Ordinaries, and one by three Ordinaries; and this day a reclaiming bill was unanimously (as I am told) refused. I was in the Outer-House.

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### QUALIFIED OATH.

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No. 2. 1736, Feb. 18. JEAN BUDGE, &c. *against* M'KAY of Strathy.

(THIS case is expressed in the manuscript notes in the same words as in the text.)

No. 3. 1736, Dec. 3. CREDITORS OF MENIE *against* BROOMFIELD.

See Note of No. 6, *voce* ARRESTMENT.

No. 4. 1737, Jan. 18. MOFFAT *against* MOFFAT.

THE Lords found the quality in the defender's oath intrinsic, viz. that some time after the bargain of sheep, the pursuer ordered him to pay the price to the pursuer's brother-in-law. The Lords were divided, and among others, I own I thought it was extrinsic, till a decision was cited, 6th July 1711, Clerk *against* Dallas, (Dict. No. 12, p. 13,213.) which determined me.

No. 5. 1740, Jan. 29. SUTHERLAND of Forse *against* SUTHERLAND.

KINMINITY having got an indorsation from the poor woman to a bill of 350 merks, which she alleged to be in trust; he acknowledged the getting the indorsation, but said it was a gift. The question was, Whether this was intrinsic; and indeed if the circumstances were true, the thing seemed improbable; at least it seemed to be too great a donative. Several of us, particularly Royston, Dun, Murkle, *et ego*, were clear that it was intrinsic; but the President thought that when the facts set forth in the intrinsic quality seemed probable, he would believe the quality, but if the fact was improbable, he would not believe it, without further proof. This I could not agree to, or think that intrinsic or extrinsic could depend upon the Judge's opinion of the facts being probable or not,