

The pursuer having declined condescending in terms of the second part of the interlocutor, the Sheriff assolized the defenders, and the cause was brought into Court by advocacy.

*Pleaded* for the pursuer; The words of the act exempting from toll the horse that carries the mail or packet, applies equally to mails that are dispatched occasionally, as to the regular established post. It is of no consequence, whether the dispatch goes upon the business of government, or of private individuals. The transmission is, in both cases, a matter of public service and police; and, if the dispatches in any of these different circumstances are sent agreeably to the regulations of the post-office, they are entitled to the exemption.

*Answered* for the defenders; The common post is established for the public utility, which is a good reason for the exception in its favour; but the act nowhere conferred on post-masters a power of exempting expresses on the private business of individuals from paying toll.—These exemptions differ in no respect from dispatches sent by a private messenger, except that the post-master lends the post-office seal, in order to give the rider the command of horses on the road to facilitate his progress.

The number of these expresses is now considerable; and, when private persons have occasion to send them, and to take the benefit of the public road, it is reasonable they should pay for it. This does not interfere with the accommodation afforded them by the post-office, of commanding horses on the road, which is by no means inconsistent with paying toll.

THE COURT found, " That toll-duties and postage were not exigible by the defenders for the horses dispatched with the mails, packets, or expresses libelled; and therefore, found the defenders liable in repetition to the pursuer of the toll-duties and postages exacted by them for the said horses."

Lord Ordinary, *Kennet.* Act. *Sol. General.* Alt. *Cullen.* Clerk, *Menzies.*

*Fol. Dic. v. 4. p. 198. Fac. Col. No. 80. p. 154.*

1781. November 27. KINLOCH against OGILVIE.

OGILVIE possessed a farm watered by the burn of Kirriemuir. About 15 yards from the bed of this rivulet, he dug pits for steeping flax, in the manufacture of which he traded to a considerable extent. Into these pits the water entered, and issued from them into the rivulet in a continued stream.

Mr Kinloch, a neighbouring heritor, commenced a process against Ogilvie, before the Sheriff of the county, on account of these pits, upon the statutes 1606, c. 13. and 1685, c. 20.; by which it is enacted, ' That in time coming, no person shall lay in lochs or running burns, any green lint, under the pain of 40s. Scots, and a forfeiture of the lint.'

No 25. In an advocacy of a judgment of the Sheriff, decerning in terms of the libel, the defender

*Pleaded*; In this case an implicit obedience has been paid to the injunction of the statutes, the pits challenged not being in the bed of the rivulet, but at a considerable distance. They are, farther, precisely conformable to a later statute, 13th George I. c. 26. requiring, ' That no lint or hemp shall be steeped, or watered, in any standing pool, or in any hole or pit with standing water, unless such hole or pit is dug near to the side of a running river or rivulet, from whence the said pool, hole, or pit, may be frequently supplied with fresh water, under forfeiture of the lint or hemp so steeped.'

*Answered*; As the water of this rivulet runs into the pits, and from thence back to the rivulet in a continued stream, the pits so constructed become a part of the rivulet, as much as if they had been dug in its original channel; and the statute of George I. which directs the operation of steeping lint and hemp to be performed where the water may be frequently renewed, was nowise intended to repeal the former law, but to guard against a practice then frequent, of watering them in moss and bog holes, and standing pools, by which they were greatly damaged.

THE LORDS thought that persons steeping lint were entitled to take water from a running stream for the use of their lint-holes, and to renew the water therein from time to time, when necessary; but were not entitled to divert the course of any part of a rivulet into a lint-hole, in the manner here followed.

They, therefore, " remitted the cause *simpliciter*."

Reporter, *Lord Alva.* Act. *Buchan-Hepburn, John Erskine.* Alt. *Nairn.*  
Clerk, *Colquhoun.*

C. *Fol. Dic. v. 4. p. 202. Fac. Col. No 7. p. 15.*

No 26.

Whether a tradesman's sign-board may be affixed to the wall of another person's house? See No 23. P. 13182.

1783. February 27. GEORGE MURDOCH *against* ALEXANDER DUNBAR.

MURDOCH, a baker in the town of Nairn, having, as had been sometimes done by others formerly, affixed his sign-board to the wall of a house, situated over the entry to a public lane, in which his bakehouse stood, and possessed by Dunbar; the latter, displeased at the circumstance, without obtaining any public authority, took it down, and carried it into his own house. The Magistrates, in consequence of a complaint against him preferred by Murdoch, besides ordering him to re-place the sign-board on the wall, imposed a fine of 20s. on him for the use of the public, and another of the same amount for that of the private party.

Of this judgment Dunbar presented a bill of suspension, which was refused by the Lord Ordinary on the bills.