

APPENDIX.

PART I.

PUBLIC BURDEN.

1800. June 13.

THOMAS JOHNSTON, *against* JOHN HOME, *Curator Bonis* on the Estate of Renton.

SIR JOHN HOME of Renton, in 1747, sold the lands and teinds of Templehall in the county of Berwick. By the disposition, he became bound to relieve the purchaser 'from payment of all minister's stipend, schoolmaster's salaries, augmentations of the same, or new erections, and all burdens which do or can affect the lands and teinds thereby disposed for ever; excepting £5 Scots money, payable yearly to the schoolmaster of Coldinghame forth of the said lands, and the proportion of cess that should from time to time be laid upon, and levied forth of the same.'

In order to ascertain the meaning of this clause, Thomas Johnston, in right of the purchaser, in 1794, brought a declaratory action, in which Lord Craig found, that the 'heirs of entail of the said Sir John Home, are bound to relieve the pursuer Thomas Johnston of all burdens which can be exacted from the lands of Templehall, in name of poors' rates, bridge-money, repairs of toll bars, manses, school-houses, and other public and parochial burdens, as also of all minister's stipends, schoolmaster's salaries, augmentations of the same, or new erections, and all other burdens whatever, which can any way affect the said lands or teinds thereof, except the sum of £5 Scots, payable yearly to the schoolmaster of Coldinghame, and a proportion of the cess that shall from time to time be laid upon, and levied forth of the same, and that by making payment thereof *prima instantia*, along with the public burdens which they pay for the estate of Renton to the collector of these duties, when the

No. 1.

A clause in a disposition of lands and teinds, by which the disponent became bound to relieve the purchaser 'from payment of all minister's stipend, schoolmaster's salaries, augmentations of the same, or new erections, and all burdens which do or can affect the lands and teinds,' except the schoolmaster's salary there specified, and the cess leviable from the lands, found

No. 1.
not to include
the conversion
for
statute-labour
introduced by a
subsequent
act of Parli-
ament.

‘ same become due, and reporting sufficient discharges thereof to the said Thomas Johnston.’

Under this interlocutor, Johnston claimed relief from the conversion for statute labour, introduced by a late act of Parliament for the county of Berwick.

This produced a suspension on the part of John Home, *curator bonis* on the estate of Renton, in which he

Pleaded : There is a material distinction between those public burdens, which properly affect the proprietor of the lands, and those which fall on the person in the natural possession of them ; the former are fixed by the value of the lands, the latter by the mode in which they are occupied. The former only were meant to be included under the disposition by Sir John Home ; and statute-labour is an exclusive burden on the actual possessor of the lands, unless the contrary be expressly stipulated, while cess, schoolmaster’s salary and the like, are payable by the landlord.

Accordingly, by the act 1669, c. 16. ‘ tenants and cottars and their servants,’ are the persons directed to be summoned for repairing the high-roads. And by the late act for the county of Berwick, converting the statute-labour, the conversion is made payable only by those previously liable in statute-labour.

By the act 1669, indeed, when the statute-labour is insufficient, heritors are appointed to assess themselves for repairing high-roads, making and repairing bridges and ferries. But in practice this assessment has always been limited to the two latter. It has thus become a burden on the proprietor ; and on this account the suspender acquiesced in the interlocutor finding Mr. Johnston entitled to relief from bridge-money.

Answered : The clause was meant to include all burdens falling on the purchaser as holder of the lands, in contradistinction to mere personal taxes. The conversion for statute-labour is of the former description ; it is fixed by public authority, and is ultimately payable by the landlord. The suspender admits himself liable in payment of bridge-money, which is just a conversion for actual labour, found necessary at a more early period than with regard to high-roads. An assessment even for the latter purpose is authorised by the act 1669, when the statute-labour is insufficient ; and the conversion introduced by the late act of Parliament is to be so considered.

The Lord Ordinary repelled the reasons of suspension.

But, upon advising a petition, with answers, the Court, on the ground that the clause in question did not include relief from the actual performance of statute-labour in 1747, nor consequently from the conversion substituted in its place by a posterior act of Parliament, altered the interlocutor, and suspended the letters.

Lord Ordinary, *Craig*.
Clerk, *Home*.

For the Suspenders, *Ar. Campbell*.

Alt. *Williamson*.