

reserving to the defenders their relief from one another, and also from the Representatives of Mr Adam as accords."

No 31.

But afterwards, (12th December 1797,) on advising separate reclaiming petitions for the Magistrates and the Trustees, with answers for the pursuer, the COURT "assoilzied the Trustees, but adhered to their former interlocutor reclaimed against, finding the Magistrates liable in damages and expenses, and refused the desire of the petition; reserving to them their claim for relief from the Representatives of Mr Adam, and others who may have acted in carrying on the building, and to them their defences as accords." And by another interlocutor, (6th February 1798,) modified the damages to L. 285 Sterling, with L. 100 of expenses*.

Lord Ordinary, *Eskgrove*. Act. *Jo. Clerk, Maclaurin*. For the Magistrates, *Orwald*.
For the Trustees, *Arch. Campbell, jun.* Clerk, *Menzies*.

Fac. Col. No 60. p. 137.

1804. *January 20.*

MAGISTRATES OF INVERNESS *against* SKINNERS OF INVERNESS.

IN the process of converting skins into leather, the Corporation of Skinners in the burgh of Inverness have long been in use to wash them in running water, after being steeped with alum and lime in pits, for the purpose of removing the hair and putrid animal substance adhering to it. The water they have always used for this purpose is the river Ness, in the very centre of the town, and the practice has continued for two centuries, not, however, without occasional complaints from the inhabitants, on account of the pollution of the water by this operation. The town is almost entirely supplied with water for the use of the inhabitants from the river.

The Magistrates, in consequence of these complaints, made, at different times, (October 1770 and May 1781) acts of council, prohibiting, under pain of confiscation, the practice of immersing skins in the river above the north boundary of the minister's glebe.

These proving ineffectual, a complaint was presented by the procurator fiscal to the Magistrates, who (May 7. 1800) repelled the plea of prescription urged by the skinners, and granted the interdict, in terms of the prayer of the petition, under the penalty of L. 5 Sterling for each transgression.

An advocacy of this judgment was raised, which having been passed, an action of declarator of the skinners' right to steep their skins in the part of the

* A second reclaiming petition was presented by the Magistrates, praying, that the sum to be paid by them to Mr Innes should be a debt on any future funds received for completing the College by the Trustees. No answers were given in, and it does not appear that any further procedure took place in the cause.

No 32.

A nuisance long established in a public river, cannot be removed.

No 32. river they had been immemorially used to, was conjoined to it, a proof taken, and the whole cause reported to the Court.

The Magistrates

Pleaded ; Independent of the ordinary powers and privileges conferred on them in common with the magistrates of other royal burghs, the Magistrates of Inverness have acquired right from the Crown, in totam et integram aquam de Ness, omnesque partes et utrumque latus ejusdem, from about two miles above the town to the sea. The river Ness is thus peculiarly subject to the jurisdiction of the Magistrates ; and, although, like every other public river, it may be polluted in a variety of ways, which it would be disgusting to describe, yet, so far as it is in their power, their duty is to prevent the water from being defiled by any unnecessary operation, for from it nearly the whole town is supplied with water for every kind of use. The proof is clear and distinct that the operations of the skimmers considerably affect the purity of the water, so as to render it unfit in a great degree for the uses required by the inhabitants, in so much, too, that it has been thought prejudicial to their health. If it be what the law considers a nuisance, no length of time can give it a legal effect. For a time it may have been overlooked through inadvertency, and suffered to exist ; but this tolerance must give way, whenever the illegal nature of the operation becomes the subject of complaint.

Now, to constitute a nuisance, it is not necessary that the injury occasioned by any operation should be such as to render the enjoyment of life and property intolerable ; it is enough if it render them uncomfortable ; Blackstone, vol. 3. p. 218 ; Bur. Reports, p. 333. Such was the decision of the Court in Kinloch against Robertson, 9th December 1756, No 8. p. 13163., where a blacksmith's forge was ordered to be removed from the upper storey of a house ; in Miller against Stein, No 35. p. 12823., the primary use of water being destroyed by the operation of a superior heritor polluting it, an interdict was granted at the instance of an inferior heritor ; and the same principle was adopted in Russel against Haig, No 36. p. 12823. The act may, in all these cases, be lawful in itself, and proper to be done ; but being done in that place, and necessarily tending to the damage of another's property, it is a nuisance, and it is incumbent on him to find some other place to do that act, where it will be less offensive.

Answered ; The right enjoyed by the Corporation of Skimmers, has been publicly and uninterruptedly carried on ever since the existence of the trade, and probably the constitution of the burgh. Nor is it surprising that they should have continued in the exercise of this right, when it is considered, that the Ness is a navigable river, containing a large body of water, with a strong current, subject to the ebb and flow of the sea ; running through the center of the town ; receiving the refuse of every manufacture carried on in it ; and that it is the only means of carrying to the sea the filth generated in every part of the town, which is the resort of a numerous population. The pollution of the

stream from steeping or washing the skins, must be trifling indeed, compared to the aggregate mass of corruption from other sources; and it arises from an employment of the stream, which is useful in itself; which cannot be conveniently carried on elsewhere; and where the right has been acquired without fraud, and enjoyed till now without any serious challenge.

A nuisance must be substantial in itself, and detrimental to the public, materially affecting the enjoyment of life and property; the best criterion of this must ever be the immediate and frequent complaints of the neighbourhood. So that, in almost every case, the nuisance must arise from some recent operation, as in *Miller and Russel*, perverting the use which nature intended should be made of the subject. In both these cases, the stream which was polluted was small and private. But the Ness is a public river, destined by nature for the useful purpose of removing to the bosom of the ocean those substances which might otherwise be very noxious.

THE COURT (20th January 1804) advocated the cause, and removed the interdiction, decerned in the declarator, and found the Skinners entitled to their expenses; and to this interlocutor adhered (9th February 1804), by refusing a reclaiming petition without answers.

Observed on the Bench; The principle which lays the solid foundation of the present judgment, is thus expressed in a pleading by Sir George Mackenzie, in the *Fishers of Tweed against Pringle of Haining*, See APPENDIX; "Public rivers have been very wisely spread up and down the world, to be easy and natural vehicles for conveying away to the sea (that great receptacle of all things necessary) excrements, and other noxious things, which otherwise would have very much prejudiced mankind.—Rivers are nature's highways by water; and we may as well forbid to carry any thing that smells ill upon our highways by land, as we may forbid to throw in stinking water into our rivers."

Lord Ordinary, *Glenlee*. For Magistrates, *Gillies, G. Ross*. Agent, *Jo. Mactavish*.
 Alt. Lord Advocate *Hope, Gordon*. Agent, *Ja. Robertson, W. S.* Clerk, *Walker*.
 F. *Fac. Col. No 137. p. 306.*

Fiars of the year; See FIARS OF THE YEAR.

Division of Run-ridge and Interjacent Grounds; See RUN-RIDGE.—PLANTING AND INCLOSING.

Straighting of Marches; See PLANTING AND INCLOSING.

Winter herding; IBIDEM.

Regulations respecting the Poor; See POOR.