

* * * This case was appealed :

No 34.

The House of Lords, 20th February 1782, ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutors complained of, be affirmed.

1791. November.

MILLER *against* STEIN.

No 35.

MILLER of Dalswinton bought the lands of Southfield, through which there runs a small stream of clear water fit for family uses; the banks of which Mr Miller planted and ornamented at considerable expense, and supplied a cold bath from the water. Stein having purchased a brewery in the neighbourhood, which had lain for some time unoccupied, converted it into a distillery, the refuse of which running into the stream rendered it putrid, and unfit for the use of man or beast, besides entirely destroying its amenity. Miller having presented a bill of suspension and interdict, Stein *urged* in defence, That the refuse of his distillery was not of a poisonous quality; that as superior heritor, he had a right to use the stream for any lawful purpose, which the present certainly was; and he *contended* moreover, That the distillery having been erected long before Mr Miller's house was built, he had come to the nuisance, and not the nuisance to him. THE LORDS were of opinion, That the primary use of water being to drink, no proprietor was entitled to employ the water passing through his ground in any purposes which could defeat that primary use to others who had before enjoyed it; they therefore passed the bill, and continued the interdict which had been granted by the Lord Ordinary. See APPENDIX.

Fol. Dic. v. 4. p. 173.

1791. November.

RUSSELL *against* HAIG.

No 36.

RUSSELL of Roseburn brought an action against Haig, distiller at Lochrin, in the suburbs of Edinburgh, on the ground, that the refuse-water from that distillery running into a rivulet, which in its course passes through the pursuer's grounds, brought down a mass of filth, which rendered the water formerly used for domestic purposes, and by cattle, totally unfit for these uses, and tainted even the air in its vicinity. *Urged* in defence, It is not alleged that the water itself, issuing from this distillery, was a nuisance. The fact was, That the rivulet in question was nothing else than the draining of the common sewers from the south suburbs of Edinburgh, of which the filth had formerly

- No 36. stagnated in the outskirts of the town; but now a large quantity of water, raised by a fire engine, being thrown from the distillery, that filth was of course washed down to the sea, and in its way might perhaps prove somewhat offensive, but was of no noxious quality. The defender certainly cannot be said to have occasioned a nuisance, by throwing into a common sewer water of a much purer quality than it before contained. The opening of new wells in the city would have produced the same effect. THE LORDS were of opinion, That however pure might be the water issuing from this distillery, it was enough that it was proved, that a stream, formerly fit for the necessary purposes of life, had thereby been rendered unfit for those purposes; and therefore they decerned in terms of the libel.—The cause was appealed, and the House of Lords remitted to the Court of Session to investigate, whether the water had been pure or contaminated prior to erection of the distillery. This was never done. See APPENDIX.

Fol. Dic. v. 4. p. 173.

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- No 37. 1791. November 24. OGILVY against KINCAID.

THE LORDS found, That an heritor may take away by a pipe as much water from a river as can be of use to his family and cattle, but not so much as to supply a distillery. See APPENDIX.

Fol. Dic. v. 4. p. 175.

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1793. March 5.
JOHN HAMILTON against THOMAS EDINGTON and COMPANY.

No 38.
When a private river separates the lands of two heritors, neither can take a cut from it for the purpose of establishing any species of manufacture, without the consent of the other.

A FEW miles above the city of Glasgow, the river Clyde runs between the lands of Westburn, the property of Mr Hamilton, and those of Carmyle, which belong to Mr Dunlop. A short way above Mr Hamilton's boundary, a dam-dyke runs across the river, from which two opposite mills are supplied with water, the one belonging to Mr Dunlop, the other to the Duke of Hamilton; but the water taken off to supply these, returns into the river before it reaches Mr Hamilton's lands. For some years, Messrs Edington and Company had carried on an extensive iron-work on the lands of Carmyle. Their operations were performed by means of a steam-engine. Thinking, however, that a stream of water from the Clyde would answer their purpose better, they purchased Mr Dunlop's mill, and intended to lengthen and enlarge the old water-course, so as to carry, as they themselves admitted, an eighth or a tenth, or, as Mr Hamilton alleged, one fourth of the whole river, entirely past his property. Upon their beginning to execute this plan, Mr Hamilton brought a suspension, in which he