

A
Supplement to the Forth great Booby
of the Law of Scotland.

noted what things are marked with a star thus * as being taken in
the body of my book.

* n. 1. Those having Right to a salmon fishing in a River represented by a petition that an Earl's Draining
a Loch upon his own Ground and letting it into that River had given a Red Tindars to the River, which
hindered the Salmon to swim thro' to the great Detriment of the Country, and therefore craved he
might be ordained to stop his letting out more of that noisome thing. It was answered, That any prejudice
the Supplicant might sustain could not hinder a person to dispose at pleasure of his own property by
cutting his own Ground to drain his Loch. It was Reply'd, That one may indeed use his own property so
as to keep within his own Bounds, and send not forth any noisome thing upon his neighbours. He may
build upon his own Ground about his neighbours Right or property as he pleases, or may dig a
well in his own Ground, tho' the beams of his Neighbours are well as they are cut off. But if he
have a Loch on a Hill he may not cut it to drain his Neighbours Ground below; nor can one build a
mill upon his own Ground, to carry the water from his neighbours Mill; nor can he turn the water
out of the old Channel, to make it run other ways upon his neighbours than formerly; nor can he
glorify of an Inferior Dominion within Burgh, put Bars upon the face of it, to Engrave the Superior
Dominion. It was Reply'd 1. Suppose the proprietor of the Loch could not wrong his neighbours
by using it contrary to the nature of it, nothing could hinder him to drain his Loch that way seeing
it had before a perpetual current to the River, and after the Draining (which would be for ever)
the current to the River would be as little and as pure as ever: So that any temporary Damage
to the Fishing could not bar him from following the natural course of the Loch and adding the
passage to make it run quickly out. 2. That one could make no new work upon his own Ground
to the prejudice of his neighbours property; yet he might well send away a small matter,
corruption or filth by a publick River without any injury to his neighbours. It is an ill corruption
and carry it to the Sea without Detriment to Fishing, which is especially liable to such In-
convenience. The Lords inclined to refuse the Bill upon this main consideration, that it
was the proper use of Rivers to carry away the corruption & filth of the Earth, which should
not be hindered by any Right of Fishing, which is but a casualty given to him who has the Burden
of the common use of the River. 1 June 1661 Mayor of Berwick & others contra Draining.

* n. 2. one in company with others in an Inn made show of a purse of Gold to the Substant in the Inn
without telling any person of the House thereof, as the Master of the Inn was going to his Bed
in his Chamber in the Inn he was advised by a servant of the House to lock or bolt the door of
his Room, but neglected to do it: when the Host next morning he exclaimed that he was robbed,
of his Gold and the Empty purse was found lying upon the Table in his Room. He pursued the
Innkeeper for his Gold upon the Oath, Nihil capimus &c. who pleaded in defence that he found
action upon the fact &c. 1. The Gold abstracted might have been visibly brought to the
Host in view of the Innkeeper or servants intrusted by him; or at least that might have been
told thereof: whereas there no person belonging to the House saw or knew of the purses
Robbing for the purse about them. 2. It might be proved that some other person than the owner
took the Golds amongst out of the Trunk, chest bag &c. whereas there the purses which was in
the owners own possession might have been found Empty upon the Table without any others
Touching it. 3. The Oath takes no place where the Trunk or bag was not lock'd to his own Goods
and tacitly consented to do it by not saying any. And here the purses when Drugg'd to take care of what
might be about him by locking or bolting the door being suffered left by neglect of this caution may
blame himself. For the Innkeeper or his servants were not bound to sit up all night and watch the
purses; or to answer for left he might have fastened by other passengers whom he provoked to abuse
him by exposing to them his purse. It was Reply'd for the purses 1. The Oath doth not require
Travelers to propose to their Hosts what they have in their pockets & custody, which were to expose
them to the greatest Temptation that such impudent young Rominians all men are capable of
try to have their purses and Goods attacked by the said Lord in order to get what he knows to
be in their purses and so to be a prey to him. But Innkeepers are answerable for the safety of their
Guests and their things: those can answer they had about them. Servants Innkeepers have them in their
option to receive or not any persons whose fidelity they doubt: unless they know what they have
about them, and if they doubt requires them to do so, are proposed to bring them only as to what
they shall afterwards pretend to have in their Quarters. 2. How doth the owner of the said Lord
upon his going to the Lodger the Keys of his Room & bidding him look to his own things, unless
he acquiesces and consent to run the Risk & to make his own protection by putting a Nail in the
Innkeepers eye.