

THE BOOK
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3. Contributions should be supplied in digital form, with a printout on one side of A4 paper, with wide margins. Consult recent volumes for details of house style.
4. Notes and references should follow the text, with Arabic numerals inserted consecutively at the appropriate places in the text.
5. References to printed sources should be set out as in the following examples:
Sir Daniel Wilson, *Memorials of Edinburgh in the Olden Time*, 2nd edn, 2 vols (Edinburgh 1891), II, p. 59.

J. B. Morrell, 'Medicine and Science in the Eighteenth Century', in Gordon Donaldson (ed.), *Four Centuries: Edinburgh University Life, 1583-1983* (Edinburgh 1983), pp. 38-52.

R. K. Hannay and G. P. H. Watson, 'The Building of the Parliament House', *Book of the Old Edinburgh Club*, 13 (1924), pp. 1-78.

6. References to manuscript sources should be in accordance with the practice of the repository in which the documents are housed. Examples are:

Edinburgh City Archives (ECA), Town Council Minutes 12 August 1752.

National Library of Scotland (NLS), MS.638, ff. 9-10.

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JOHN BARTON qualified as a solicitor in 1960 and was admitted as a Writer to the Signet in 1966. He is joint author of *Procedures and Decisions of the Scottish Solicitors' Discipline Tribunal* (1995), taught professional ethics at Edinburgh University and served as President of the Rent Assessment Panel for Scotland. He was more recently a Tribunal judge. Now retired, he has written many articles on Highland history and is the author of *Exploring Badenoch: Clan Macpherson Country* (2016)

JOHN CHALMERS graduated in medicine in Edinburgh in 1950 and spent most of his working life as an orthopaedic surgeon in this city, with useful breaks in London, Chicago and Hong

Kong. He spent some of his childhood in the USA where he first heard of John James Audubon, the ornithologist and bird painter, who is the patron saint of anything relating to natural history in the States. In retirement he followed up this interest and discovered that Audubon had spent several years in Edinburgh where the first engravings of his paintings were made by William Home Lizars and William MacGillivray, conservator of the College of Surgeons Museum helped him write his *Ornithological Biography*. Chalmers published *Audubon in Edinburgh* (2003). When researching Audubon, he became interested in Andrew Duncan, an Edinburgh physician who befriended Audubon and amongst other contributions founded the first mental hospital in Edinburgh. Andrew Duncan Senior Physician of the Enlightenment, of which he was the editor and main contributor, followed in 2010. Reading about Duncan led to his great friend, Sir Alexander Boswell, the elder son of James Boswell, who was killed in a politically inspired duel and *Duel Personalities James Stuart versus Sir Alexander Boswell* was published in 2014. Thus one thing led to another, all involving Edinburgh in the early nineteenth century – an exciting time in Edinburgh's history. Research into this period continues.

DR WILLIAM FORTESCUE was formerly a Senior Lecturer in History at the University of Kent, where he taught modern European history. He is the author of four books and a number of articles on different aspects of nineteenth and twentieth-century French history. In retirement he now researches eighteenth-century Edinburgh goldsmiths and has had articles on individual goldsmiths published in *Silver Studies* and *The Book of the Old Edinburgh Club*. The current article is a spin-off from that research.

IAN LEVITT holds a PhD from the University of Edinburgh. He is emeritus professor at the University of Central Lancashire, and has published widely on aspects on the history of 19th and 20th century Scottish social, economic and public policy. His most recent work includes, 'The Treasury and public expenditure in Scotland, 1885-1979', published by Oxford University on behalf of the British Academy (2015), and 'Boy' Clerks and Scottish Health Administration,

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1867-1956', in E. Gordon (et al) (eds.), 'Medicine, Law and Public Policy in Scotland 1840-1980' (2010). He is currently exploring Treasury policy towards Scottish public investment, 1832-1885, including the National Gallery, the universities, and the Highlands.

JOE ROCK is an independent scholar and photographer, and has published a number of articles on Scottish material culture. As well as in Edinburgh he has worked in Turkmenistan, the West Bank, Jerusalem and in Egypt, taking photographs for significant publications. He has completed an article on the building history of Newhailes house, in peer review for Architectural Heritage and has made new discoveries on the decoration of a room in Moray House, that can now be ascribed to Roderick Chalmers working with Sir William Bruce in 1706-8.

MARK C WALLACE is an Associate Professor of History at Lyon College. He teaches British and Scottish history, lecturing on a wide range of subjects including British Imperialism, Scottish cultural, social, and intellectual history from the fifteenth century to the present, and the Scottish Enlightenment. A former Visiting Research Fellow at the Institute for Advanced Studies in the Humanities at the University of Edinburgh, he has written extensively on Scottish Freemasonry and eighteenth-century Scottish clubs and societies. Presently, he is editing a collection of essays entitled *The Clubbable Scots: Clubs and Societies in Eighteenth-Century Scotland*, which is slated to be published in early 2018 through Bucknell University Press in conjunction with the *Studies in Eighteenth-Century Scottish Series*. Current research is focused on the issue of domestic service in Early Modern Scotland, further examining the role of servitude in creating a social hierarchy, and the socio-economic patterns of servitude and their impact on the formation of a national identity.

NINETEENTH CENTURY NIMBYS: HENRY RAEBURN VERSUS THE STOCKBRIDGE STEAM ENGINE

KAREN BASTON

NUISANCE, anything noxious or offensive. Thus, whatever may render the air or water unwholesome, is a nuisance which a court will redress. This redress is to be obtained by presenting a bill of suspension and interdict to the Lord Ordinary on the bills.¹

This day the new jury court met in the Court of Exchequer, when their Lordships proceeded to try the case of RAEBURN & c. against KEDSLIE. This was an action relative to the erection of a steam-engine at Stockbridge-mills, which the pursuers contend, is a nuisance.²

INTRODUCTION

In the Subject section of the index to the Session Papers held in the Signet Library, there is a case listed under 'Nuisance' called 'Raeburn v. Kedsle 1815'.³ This case, in addition to featuring early nineteenth century Scotland's most famous portrait artist, was the first heard in the newly introduced civil jury court in Edinburgh. Henry Raeburn was a native of Stockbridge and one of its primary land owners. Andrew Kedsle was a grain merchant who had a mill near the Stockbridge toll road. They came into conflict at a time when the Industrial Revolution gripped Britain and pastoral ideals of living were becoming increasingly unrealistic in urban settings. *Raeburn v. Kedsle* involved issues of land use, neighbours' rights and social class. The court documents and reports relating to the case reveal much about the realities of a growing urban environment in early eighteenth century Edinburgh.

A CASE OF NUISANCE IN STOCKBRIDGE

By the autumn of 1814, certain residents and feuars of the village of Stockbridge, just to the north of

Edinburgh's recently completed New Town, had had enough. They had to keep their windows closed permanently, their gardens were covered in soot and their land was losing value fast. These self-described 'persons in a better rank of life, whose occupations in town allow them to live somewhat removed from the smoke of the town'⁴ suffered from proximity to a new steam engine and the black smoke and industrial smells it generated which had made its appearance in their neighbourhood a few months before and they decided the time had come to take their complaints to court. A grain mill had been operating in Stockbridge since at least 1760⁵ but the installation of new technology to improve its function caused conflict.

At the head of those who objected to the new engine was Scotland's leading portrait painter Henry Raeburn. Raeburn and others had written to mill owner Andrew Kedsle on 23 June 1814 to complain that the steam engine that Kedsle had erected was nothing like the one he had proposed to some of them before its installation. They had definitely noticed the difference from what had been described to them and they declared that 'none of us can exist in the neighbourhood of such a nuisance'.⁶ They were prepared to consider any measures Kedsle could take to improve the situation: 'We therefore, before proceeding further, request of you to explain to us (which you may do through the hands of Mr Raeburn) whether this engine is so constructed as to remain equally offensive to what we have already experienced, or is capable of such amelioration as may render it tolerable....'⁷

Kedsle responded quickly: he replied to Raeburn in a letter dated 27 June 1814. Kedsle admitted that his steam engine had indeed been producing more

smoke than it should but explained that the 'quantity of smoke originated in a great degree from the ignorance of the man that fired the engine' and that it 'is reduced by more than one half, and which will be still more reduced so as we get acquainted with her'.⁸ Kedslie assured Raeburn that the 'engine is on the most improved plan, which I am willing to submit to any engineer whatever; and if any thing can be done to lessen the smoke still more, I shall be very glad it be so'.⁹ However, Kedslie was concerned that the issue had more to do with 'the power of prejudice' than the actual operation and impact of his machine and he warned 'those persons [who had signed the letter but could not possibly be affected], before they proceed further, it will be well for them to consult the decisions of the Court of Session concerning these useful improvements, introduced into this country'.¹⁰ This was a bold reply since many of the signatories he referred to were well-known and influential members of Edinburgh's legal elite.

Kedslie's reply and whatever actions he took to improve the situation did not satisfy the residents and landowners of Stockbridge. Despite Kedslie's warning, they went to court to demand that Kedslie stop using his steam engine in their neighbourhood. Raeburn's name appeared alongside legal professionals, builders, landowners, and residents. The list of complainers included the advocates George Joseph Bell and Robert Bell; the Depute-Clerk of Session, James Rose; and Writer to the Signet, George Veitch. Mrs Robert Bell was also listed with George Joseph Bell acting as her trustee. These legally connected complainers were joined by landowners William Turnbull, Esquire, of Torryburn House in Fife, and Mrs Cunningham of Bonnington, near Leith and Stockbridge residents Captain James Matthew and Charles Manson, Esquire. Several builders also expressed their concern including Peter Trotter, Messrs. Howison and Ballie, John and David Paton, William Stark, Thomas Ponton, Peter Dickson, Wilkie and Dobson, Jameson and Dodds, and John Drysdale. Painter George Bengo and wright Robert Johnston rounded out the list of complainers. All were joined by the 'feurs of Great King's Street and Howe Street' and all found themselves

under the necessity of complaining of a nuisance, attended with intolerable discomfort, and productive of great injury to their property, in consequence of the erection of a steam engine...placed not in a situation appropriated to manufactures, or already debased by nuisances, but in the midst of buildings fitted for the comfort and retirement of the citizens of Edinburgh, and in the immediate vicinity of the New Town, in a situation where its effects as a nuisance are already grievously felt...and which, if not abated, must put an absolute stop to the completion of that beautiful plan for the extension of the New Town, which promised to make this one of the finest cities in Europe.¹¹

The complainers contended that Kedslie was well aware of the problems his steam engine was causing and that he had failed to take account of the effects it would have on those who lived nearby when he installed it. His steam engine's effects were evident not only in the immediate area but also in nearby King Street, Howe Street, and Dundas Street, all of which were ripe for development and all of which were 'in the very line of the smoke'.¹² Meanwhile, the steam engine's smoke made the locals' lives a misery from which there was no escape:

As to the extent of the nuisance occasioned by this smoke, it is palpable to any one who looks at it, that for many hundred yards in the course of the wind, houses must be uninhabitable while this smoke is suffered to continue. It issues from the chimney of the furnace in black volumes, too heavy, even in summer to ascend high in the air, but rolling down on the houses and ground about it in heavy clouds rendering it impossible to live under it with any degree of comfort. The furniture of the houses exposed to it is destroyed; the necessary operations of the family are obstructed or rendered vain, whether in preparing food, in washing clothes, or in cleaning or ventilating the houses. To open a window, is to admit a thick smoke into the chamber, and even the produce of the gardens in the neighbourhood is blackened and hurt by this sooty smoke.¹³

But this was not the only concern. Property values were being affected, too:

The property of the complainers themselves [they said], which comes within the range, are not less in value than £40,000 sterling, and their unbuilt ground (which has long been proposed and advertised for building, but all possibility of feuing which must stop if this nuisance continues) is worth more than £100,000 sterling.¹⁴

The complainers thought they had taken a reasonable approach to managing the situation since, instead of immediately applying for an interdict¹⁵, they had given 'Mr. Kedslie every opportunity to redeem the evils of which they complained, without having any recourse to a Court of Law'.¹⁶ Since their previous

approaches had failed, on 26 October 1814, the complainers requested that ‘the said Mr. Andrew Kedsle OUGHT and SHOULD be INTERDICTED from using the foresaid steam-engine, or creating the nuisance before complained of’.¹⁷ The complaints given in Bell’s *Suspension* satisfy the criteria needed for a nuisance claim. To be considered a nuisance, even in modern law, an objectionable activity ‘must involve the use of land or premises’, ‘be continuing’, ‘be *plus quam tolerabile*’¹⁸, and ‘involve *culpa*’¹⁹.²⁰

CONDESCENDENCE AND ANSWERS: *RAEBURN
V KEDSLIE* AT THE COURT OF SESSION

Advocate George Joseph Bell’s *Revised and Amended Condescendence for Henry Raeburn...and others* presented to the Court of Session’s Second Division on 18 December 1815 reiterated the complainers’ concerns about nuisance and falling property values in the proximity of the steam engine. They said the ‘18 horses power’ engine was getting through ‘two tons of coal per day’ and causing health problems damage to gardens, furniture, and laundry. Residents could not open their windows and no one was able to sit outside when the engine was in operation. Feuing was at a standstill and house and land prices had fallen in Stockbridge. Streets in the New Town were also ‘exposed to the full influence of this nuisance’.²¹ The complainers contended that there was ‘no apparatus for consuming the smoke’ and requested that a ‘man of science’ should be consulted about how to deal with the problem. They did not mind the mill’s ovens and the smells of baking that they generated: it was just the steam engine’s smoke and industrial smells related to it that were causing their misery.

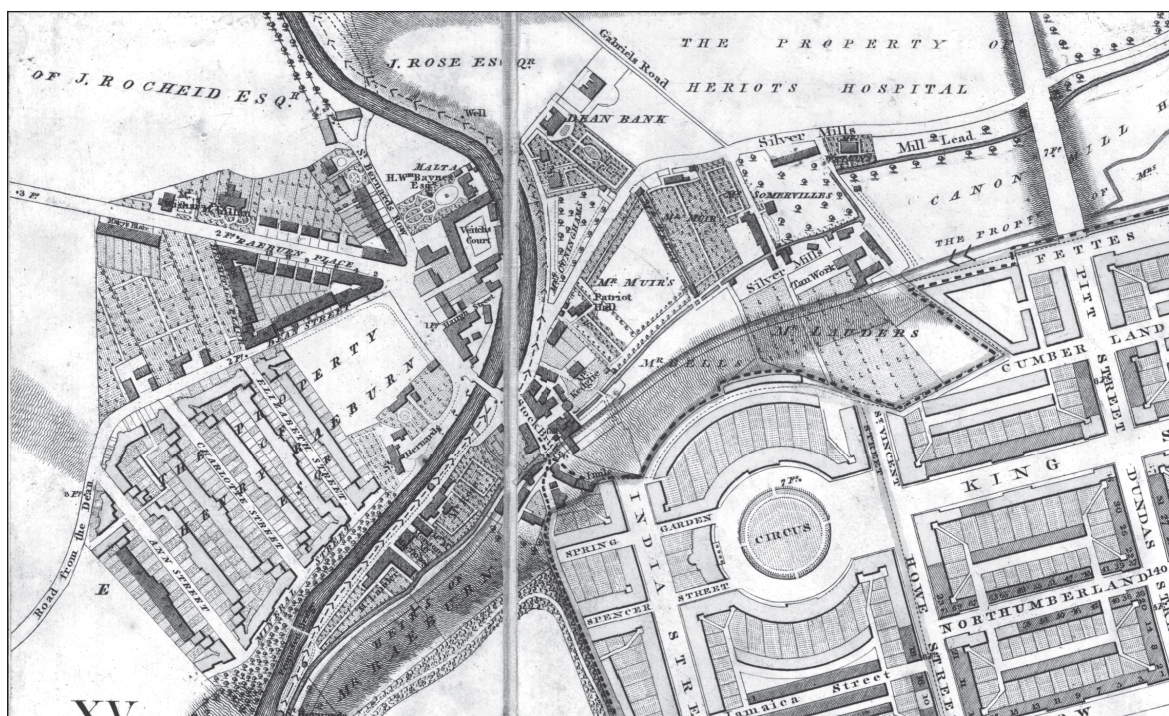
Advocate Robert Forsyth composed the *Answers* for the mill owners - Kedsle had sold his troublesome mill earlier in the year - who argued that mills were necessary and that steam engines meant that mills could move beyond locations on the crowded Water of Leith at Stockbridge where ‘Every fall of water in the neighbourhood has long been occupied’.²² This was likely: the Statistical Account of Scotland of 1791 reported that there were seventy-six mills along the Water of Leith.²³ Millers preferred to use water power when it was available since it was much less expensive than running an engine but drought or

frost meant that sometimes they needed an alternative power source. The defenders proudly described their engine as ‘of the newest and best construction upon the principle contrived of by Watt’. They also pointed out that the complainers’ information about the mill was incorrect stating that, ‘It is a seventeen horse-power, and it does not consume two tons of coal *per day*’.²⁴

Industrial equipment was by no means unique in Stockbridge which was far from the peaceful and elegant pastoral setting that the complainers claimed. Forsyth described a hive of industrial activity: ‘The ovens, smith shops, yarn boiling, and other manufacturers in Stockbridge and its neighbourhood, some of them belonging to the suspender Mr. Raeburn himself, and others of them to that gentleman’s own brother, emit as much smoke as the steam-engine in question; and the suspenders probably mistake the one smoke for the other’. Steam engines were being installed across the country in Glasgow, Manchester, London and elsewhere in Edinburgh. There one was ‘employed by Mr. Marshall at Portobello, amidst handsome houses, upon ground destined for feus’ and there was ‘also a steam engine at Silvermills’.²⁵ The mill owners contended that the engine’s output was not preventing feuing since the property market was sluggish across town. This was more likely the cause of slow sales since it was impossible that the engine could ‘affect the streets, squares, and crescents constructed in the New Town’. They also pointed out that no washerwomen – a trade likely to be greatly affected by smoke and soot – had complained or left Stockbridge since the engine had been in operation. Furthermore, the building that housed the engine was equipped with ‘Doors and sliding doors which are used to regulate the smoke’.²⁶

HENRY RAEBURN: ARTIST, ENTREPRENEUR,
AND LANDOWNERS

Henry Raeburn was no stranger to industry. His father had operated a yarn boiling factory along the Water of Leith. Robert Raeburn’s industrial complex included a 114 foot-long boiling house for his wool processing business which was completed a year before the painter was born in 1756. As his biographer in the *Oxford Dictionary of National Biography* puts it,



Extract from Robert Kirkwood's Map of 1817 showing Henry Raeburn's property to the left (west) and Mr Kedgley's grain mill in the centre just east of Stockbridge itself. [note the variant spelling of his name] John Lauder's tannery at Silvermills was also marked.

The harnessed power of this river was the necessary condition for Raeburn's trade and for the other milling operations carried out in its vicinity, and for those brought up along its banks its constant sound must have seemed a natural part of their being.²⁷

Raeburn's older brother William took over the family yarn-making business after their father's death and he ran the business until his own death in 1810. Raeburn inherited his property and, as the defenders in *Raeburn v. Kedsley* pointed out, his business. Raeburn had himself trained as a goldsmith and worked in Edinburgh's Luckenbooths before becoming a successful portrait painter. An advantageous marriage to a wealthy widow who had property in and near Stockbridge meant that Raeburn was able to become an ambitious land owner with a taste for expanding his holdings.²⁸

Raeburn's early biographers tended to neglect or play down the industrial and business aspects of his life. A first biography of Raeburn, by Allan Cunningham, appeared as part of a series on 'The Lives of the Most Eminent British Painters, Sculptors and Architects' in 1832. Cunningham portrayed Raeburn as an

'inoffensive' and demure character devoted to his art for whom monetary and legal concerns were best left to others. Although he was aware that Raeburn had interests beyond painting, Cunningham preferred to describe him as a gentleman who did not need to work for money or consider profit. Cunningham's *Life* became the most influential and most frequently quoted source on Raeburn.²⁹ Raeburn's descendent William Raeburn Andrew also focused on the social and artistic aspects of Raeburn's life and character in his *Life of Sir Henry Raeburn, R. A.* of 1886. Making no mention of the financial difficulties Raeburn faced in his later years, Andrew confidently stated that '...until his death, his life was busy, happy, and victorious. Full of work, eager, hospitable, faithful in his friendships, happy in his home, he was one of the best-liked men of his time'.³⁰

By 1807, however, a series of bad investments, including operating a shipping business from the Port of Leith, meant that Raeburn faced financial ruin. Although the directors of Henry Raeburn & Co. were his son-in-law James Philip Inglis and his son Henry Raeburn, Raeburn acted as guarantor for the firm

which concentrated its efforts on the West India trade. Inglis and the younger Raeburn chose to invest in buying ships rather than engaging in trade of putting money by for stock and customs fees. International conflict did not help their business either: the ongoing war with France meant that trade from the British colony at Jamaica was affected. By October 1807, Henry Raeburn & Co. was close to collapse. Raeburn's bankruptcy was announced in the *Edinburgh Gazette* on 12 January 1808.³¹ Raeburn and his son started feuing land on their family estate at St Bernard's in Stockbridge in 1811.³² They had by then already auctioned off the ships, cargoes and office furnishings of Henry Raeburn & Co. and Raeburn had sold his famous studio in York Place in their attempts to clear their debts of just of over £14,000.³³ Although Walter Scott described him as working 'chiefly for cash poor fellow' when he commissioned a portrait in 1819,³⁴ it is clear from the case of the Stockbridge steam engine that Raeburn retained his local influence despite his financial difficulties.

Raeburn was certainly not against technological advances generally. He was elected to the Royal Society of Edinburgh in 1820.³⁵ Some of his best known portraits are of the innovators of his time, including James Watt himself whom he painted in November 1815 even as his legal friends were working to shut the Stockbridge steam engine down. Watt's friends judged the portrait as a good likeness and Watt found the portrait to be 'more conformable to [his ideas of his face] than any of the others' but, perhaps intriguingly, thought that 'it frowns too much'.³⁶

NUISANCE IN EDINBURGH'S SUBURBS

Another case of alleged nuisance in the neighbourhood had come before the Court of Session in 1813. In this case, John Lauder, a skinner, put up some buildings to house a steam engine at Silvermills, a tiny village next to Stockbridge which had merged with Edinburgh in 1809. Lauder intended setting up a factory for manufacturing leather products and glue. Silvermills had been an industrial site since at least the sixteenth century. Feuars in Great King Street objected saying that the new industrial complex 'would be offensive, noxious and disagreeable to the neighbourhood'. Lord Meadowbank refused

to grant an interdict³⁷ and Lauder went on to run a successful steam powered tannery at Silvermills. Two of his sons became artists. One of them, James Eckford Lauder, born in 1811 so that he would have grown up, as had Raeburn, with industrial noise and fumes, even painted a portrait tribute to James Watt and his achievement as a technological moderniser many years later in 1855. The Lauder and Kedsle families knew each other well and Andrew Kedsle's son Alexander later remembered the younger artistic Lauders with fondness.³⁸

Raeburn's development at Stockbridge was one of the earliest of Edinburgh's planned suburbs following the completion of the New Town. Although mills lined the Water of Leith, Raeburn had an idealised vision of how his new neighbourhood should be. As the legal documents quoted above show, Raeburn and his allies saw Stockbridge as a rural retreat to be populated by the right sort of person. Stockbridge had an industrial past but steam technology had potential for increasing levels of pollution and nuisance in the area. Early nineteenth century developers also faced a sluggish market hampered by infrastructure being slow to arrive. Feuars on Great King Street still waited for their roadway in 1813 and Dundas Street was not yet 'possible' in 1805. Royal Circus feuars complained of an inadequate water supply.³⁹ If it was to attract the right sort of resident, Raeburn's Stockbridge had to be both picturesque and removed from the cares of the city. For Raeburn and his fellow pursuers, the fear was that the steam mill would completely replace the old ways of doing things. The engine and its plume of black smoke annoyed them and they worried that 'though, at present, it was only used to work the mill when there was a scarcity of water, yet it might afterwards be applied to other purposes'.⁴⁰

A NEW CIVIL JURY COURT

The Court of Session determined that the conflict between Raeburn and Kedsle and their associates was suitable for the newly established jury court for civil cases in Scotland.⁴¹ The idea of using juries to determine legal matters of fact was endorsed by Adam Smith. Smith saw judges and juries as the best means of determining legal rights since they could respond to specific circumstances more flexibly than legislation

could.⁴² Legal reformers argued that juries could deal with matters of fact without being bogged down by points of law thereby making the legal process more efficient.⁴³ The new civil Jury Court was established as part of a reform package designed to speed up legal processes and clear a back-log of cases that lingered in the Court of Session when more decisive action could be taken.⁴⁴ The *Edinburgh Evening Courant* described the problem in 1814 when it reported that in 'the last thirty-one sessions of Parliament no less than four hundred and seven appeals from the Court of Session have been heard in the House of Lords, only fifty-two of which have been total reversed'.⁴⁵ The idea of establishing a civil jury court gained support throughout Scotland and in December 1814 a Bill for a Jury in Civil trials was published.⁴⁶ The Faculty of Advocates approved the Bill in principle later that month.⁴⁷ The Jury Trials (Scotland) Act was enacted the following year. The establishment of the new court was controversial since some saw it as an English import designed for the convenience of the House of Lords.⁴⁸ The new experimental court was established on a temporary basis for seven years but was deemed a success by 1819 when a further act made it permanent.⁴⁹

Raeburn v. Kedsle was the first case to come before the new civil jury court and was reported in Joseph Murray's *Reports of Cases Tried in the Jury* published in 1818.⁵⁰ By the time the of the trial, Kedsle was insolvent having lost money on cargoes of grain shipments from abroad when prices plummeted after the battle of Waterloo.⁵¹ He had sold his mill to a consortium of bakers based across Edinburgh and Leith and it was they who carried on defending the Stockbridge steam engine. William Clerk, the first clerk of the new jury court, reported on 20 December 1815 that

...the following Issue is calculated to try the question betwixt the parties, viz. *Whether* Mr. Kedsle the charger did, in the course of the year 1814, in the village of Stockbridge, erect a building containing a steam engine, the smoke or exhalations from which are or may be injurious to the health, or comforts, or property of the possessors of the houses and gardens upon the property of the suspenders in the neighbourhood or the said steam engine, and are or may be likewise injurious to the said property of the suspenders.
And...Whether, according to the averment of the charger, machinery or other means can be applied, which will render the smoke and exhalations from the said steam engine innoxious?⁵²

As Clerk's report makes clear, the jury court was to consider the matters of fact in the case. This was in accordance with the remit of the new court. The 1815 Act establishing it stated that:

It shall and may be lawful for either division of the Court of Session, in all cases that may be brought before them during the continuance of this Act wherein matters of fact are to be proved, to order and direct, by special interlocutor⁵³, such issues as may appear to them expedient for the due administration of justice to be sent to the said court, that such issues may be there tried by a jury in manner herein-after directed.⁵⁴

The advocates charged with helping the jury determine the case's facts were, on Raeburn's side, George Joseph Bell, J. P. Grant, and Henry Cockburn, and on Kedsle's, Francis Jeffrey, Robert Forsyth, and John Cuningham.⁵⁵

RAEBURN V KEDSLIE IN THE CIVIL JURY COURT

On 22 January 1816 at ten in the morning following an address on the virtues of the new court by the Lord Chief Commissioner, William Adam, the case of the Stockbridge steam engine came before the civil jury court.⁵⁶ Twelve jurors were selected by ballot from a pool of thirty-six: their verdict had to be unanimous.⁵⁷ The pursuers, represented by advocate J. P. Grant, called sixteen local residents as witnesses who 'swore that they had seen volumes of smoke issuing from the engine', 'that they saw particles of soot falling on their clothes', and 'that they had been under the necessity of closing their windows to exclude the smoke'.⁵⁸ Mr and Mrs Raeburn's servants described problems with dust in the couple's home and with keeping laundry clean. Passers-by were also afflicted since 'large columns of black smoke were... very offensive to persons passing along the highway from Stockbridge to Edinburgh'.⁵⁹ A local gardener's testimony was less convincing: despite his hothouse being filled with smoke once, his fruit was unharmed and 'he had got a premium for flowers'.⁶⁰

The defenders, represented by Francis Jeffrey, a personal friend of Watt who had been at school with the inventor's son,⁶¹ contented that there was nothing special about Stockbridge as a place. It was 'a suburb of Edinburgh, and liable to all the inconvenience of a suburb of a great city'. Furthermore, because of its

location on a 'lower level, it naturally could not be a pleasant residence'. It was not a rural retreat since 'there were in it smithies, ovens, a boiling-house, and near it a skinner and two distilleries, any one of them sending out more noxious vapour in an hour than this engine does in a day'. Jeffrey pointed out that Kedsle was the Stockbridge resident who lived closest to the engine and therefore the most likely one to be affected by the nuisance.⁶² Jeffrey addressed the jury for 'nearly two hours' and asked them to decide 'Is the injuries so much as to warrant the putting down of this engine?'⁶³ Jeffrey's 'most ingenious and humorous speech' ended with 'his hope that should the jury have the patience to examine all his witnesses, they would find for the defendant'.⁶⁴

Although called by Jeffrey, John Leslie, mathematician, natural philosopher and professor at the University of Edinburgh was asked to give evidence by both sides of the dispute. Leslie was known for his experimentation with heat and cold and had devised an ice-making machine in 1810.⁶⁵ He had an extensive knowledge of how steam engines worked. He fit the role of 'man of science' perfectly and was consulted about the physical properties of the Stockbridge mill's steam engine at the request of both sides. Leslie was a regular visitor to Stockbridge and was 'in the habit of walking there during the summer months, and other leisure times' and he had 'never felt the smallest inconvenience from the smoke'. After examining the engine when 'it was going at full power...he considered it...a very perfect one'. Leslie found that there was not any problem with the engine in Stockbridge and 'he saw no reason to consider it a nuisance'.⁶⁶ It was 'of the most approved construction' and he and the engineer were both 'doubtful of proposing any alteration'. Furthermore, 'he stated, that, if properly managed, there ought to be very little smoke'.⁶⁷ Jeffrey's other witnesses included three washerwomen who 'had never found any injury more than usual to the linen under their charge', a 'professional gentleman' who corroborated Leslie's evidence, and others who agreed that the steam engine was causing no damage or nuisance.⁶⁸

Jeffrey's friend, George Joseph Bell, either gave a short response for the pursuers or 'replied at considerable length with great learning and ingenuity' according to different newspaper reports.⁶⁹ The Lord Chief Commissioner complimented the jury on its patience: the proceedings had taken a full

day. He remarked that it would 'afford us satisfaction in retiring to our respective houses this evening, that, during the twelve hours we have sat, more has been done than would probably have been done in the ordinary court for twelve months'.⁷⁰ The jury then retired for about fifteen minutes before turning with a verdict 'That the engine was useful, and not offensive'.⁷¹ The jury was not convinced that the steam engine was causing the discomfort and damage alleged by the pursuers. They found that Kedsle had indeed erected a steam engine in his mill but they 'return[ed] a verdict negative as to all the other parts of the issue'.⁷²

Innovation and new manufacturing took precedence in Edinburgh's development. It was not just the coal fires in its houses that earned Edinburgh its famous nickname, 'Auld Reekie'. Industrial chimneys came to dominate the skyline rather than the domes created to evoke the classical age. The early nineteenth century saw industry which had relied on water power move away from the Water of Leith and into the city and its growing suburbs. Henry Raeburn and his fellow Stockbridge nimbys were perhaps right to worry about the impact of the chimneys and steam engines in their midst. A House of Lords appeal ruling of 1818 reversed previous rulings which had encouraged development in the New Town. The Lords' ruling meant that feu charters or deeds could be used to control property use and owners' and investors' interests would be protected against activities undertaken on their neighbours' property.⁷³

George Joseph Bell, the advocate who had drafted the documents for the complainers in *Raeburn v. Kedsle* and summarised their evidence for the jury, addressed land use and nuisance in his *Principles of the Law of Scotland for the Use of Students in the University of Edinburgh* first published in 1829. Bell's section on 'Absolute Use of Land' said that a land owner

...may establish manufactories, or build chimneys, although the effect should consequentially be injurious or unpleasant to his neighbour; subject, however, to the law of nuisance.⁷⁴

Bell's definition of nuisance included 'whatever is noxious, or renders life uncomfortable, to the King's subjects generally, or to the neighbourhood...'.⁷⁵ By his reckoning, Kedsle's Stockbridge steam engine

fitted this description and this is the tack he had taken when composing his arguments for Raeburn and his other neighbours back in 1815. Among the cases Bell cites is *Lauder* but he makes no mention of *Raeburn v. Kedslie* in the section on nuisance in his *Principles*. Bell drafted the report of a Royal Commission which investigated the operation of Scottish court system in 1823 which rejected the idea that the civil jury court should be fully incorporated into the Court of Session. The Court of Session Act 1825, however, extended the remit of the jury court to include cases dealing with insurance, carriage of goods, responsibility for goods by third parties and personal incapacity.⁷⁶

THE STOCKBRIDGE STEAM ENGINE AFTER 1816

The Stockbridge steam engine attracted attention again in 1843 when the *Scotsman* newspaper reported on a 'Case of Nuisance' involving the 'Commissioners of the Police v. The Stockbridge Mill Company'. As earlier in the century, the smoke emitted by the steam engine caused the complaint. This time Stockbridge residents appealed to the Sheriff to get the mill owners to reduce the amount of smoke the engine was producing. They cited a section of the Edinburgh Police Act of 1822 which enacted 'That the owners and occupiers of all steam-engines, and of all foundries, glass works, gas manufactories, distilleries, breweries, and other manufactories wherein furnaces are used' should control the smoke

created by their industries. The Sheriff dismissed the action as irrelevant since technology had moved on in the twenty years since the act and found the pursuers liable for expenses.⁷⁷

By 1901 the Stockbridge Mill had a new name: Tod's Mill. On 16 July of that year, as an old gas engine was being removed, the mill exploded. Six workers tasked with preparing the gas engine for transportation to a new owner in Leith died of burns and shock at the Royal Infirmary and at least fifteen people, including a grocer whose shop adjoined the mill, were seriously injured.⁷⁸ Local homes and shops sustained damage from the fire as well as from the water pumped from the Water of Leith that the forty firemen called to the scene used to put out the flames.⁷⁹ The fatal accident inquiry found that the disaster had occurred because a pipe that connected the engine with the gas main had become loose and the concentration of gas had ignited.⁸⁰ Nothing remains of the Stockbridge Mill today except for the lade that supplied it with water and the name of the modern apartment block – Lade Court – that stands on its site in Baker's Place.

Nuisance is still an issue in the Stockbridge area. Residents are currently debating the volume of the chime of St Stephen's Church. This rang for 189 years but has recently been complained of as a noise nuisance and the chimes have been stopped pending further investigation.⁸¹ St Stephen's is situated close to the site of Lauder's tannery in Silvermills.

APPENDIX ONE: SUSPENDERS, 1814 Addresses taken from the *Edinburgh Post Office Directory*, 1813-14

Henry Raeburn, portrait painter, 34 York Place

Mr Ballie [Baillie], wright, 5 St Ann St [sic]

George Joseph Bell, esq., advocate, 36 Heriot Row

Robert Bell, esq., advocate, 12 Dundas St

Mrs Robert Bell [not listed, see Robert Bell]

George [sic] Beugo [Gavin Beugo], painter, West Register St and -house, Stockbridge⁸²

William Cunningham, esq., Stockbridge

Peter Dickson, mason, Stockbridge

Robert Dobson, builder, 35 Dundas St

John Drysdale, builder, 16 Gayfield Sq

Mr Howison [builder, not listed, Howison & Baillie]

Jameson & Dodds [builders, not listed]

Robert Johnston, wright, Stockbridge

Charles Manson [not listed, but see Mrs Charles Manson, grocer, 13 Bristo St]

Capt James Matthew, 1 Carruber's Close

David Paton [not listed, see John Paton]

John Paton, builder, 32 Dundas St

Thomas Ponton, esq., King Street

James Rose, Depute Clerk of Session, Stockbridge

William Stark, plasterer, 4 Jamaica St

Peter Trotter [not listed]

William Turnbull, esq., Stockbridge

George Veitch, esq. W. S., 2 Young Street, New Town

Robert Wilkie, builder, 20 James' Sq

NINETEENTH CENTURY NIMBYS

APPENDIX TWO: CHARGERS, 1815

Addresses taken from the *Edinburgh Post Office Directory*, 1815-16

Andrew Kedsilie, merchant, Stockbridge [as listed in *Directory* for 1813-1814]

John Aitcheson, baker, 4 East Register St and King St
Robert Brown, baker, 63 Fountainbridge
Alexander Dalziel [Dalzel], baker, Couper St, north Leith
William Dalziel [Dalzel], baker, Queen St
Hugh Dickson, baker, Shakespeare Sq
James Forsyth, baker, 19 Portsburgh

William Miller, baker, 57 Potterow
John Mitchell, baker, 17 Potterow
Alexander Philip [Philips], baker, 12 College St
Alexander Pringle, baker, 22 Broughton St
Robert Saunders [Sanders], baker, Queensferry St
Andrew Tait, baker, 78 Rose St
Thomas Veitch, baker, Stockbridge

NOTES AND REFERENCES

- 1 Robert Bell, *A Dictionary of the Law of Scotland for the Use of the Public at Large, as Well as of the Profession* (Edinburgh 1808) II, p. 543.
- 2 *Edinburgh Evening Courant* (22 January 1816), p. 3.
- 3 Signet Library reference 330:6. Link to Subject Index: <https://archive.org/details/WSSocietySessionPapersSubjectIndexAndWriters>.
- 4 *Suspension: Henry Raeburn, Esq. of St. Bernards, and Others, against Andrew Kedsilie, Proprietor of Stockbridge-mill* (26 October 1814; Signed 14 November 1814), p. 2.
- 5 Graham Priestley, *The Water Mills of the Water of Leith* (Edinburgh 2001), pp. 68-9.
- 6 *Suspension*, appx. p. 1.
- 7 *Suspension*, appx. p. 1.
- 8 *Suspension*, appx. p. 2.
- 9 *Suspension*, appx. p. 2.
- 10 *Suspension*, appx. p. 2.
- 11 *Suspension*, pp. 1-2.
- 12 *Suspension*, p. 2.
- 13 *Suspension*, pp. 2-3.
- 14 *Suspension*, p. 3.
- 15 An interdict was a prohibition imposed by the civil court.
- 16 *Suspension*, p. 3.
- 17 *Suspension*, p. 6. The interdict remains as the primary remedy for dealing with claims of nuisance. It stops the action that is causing a nuisance pending investigation of the matters of fact and thereby prevents the occurrence of further damage. Gordon D. L. Cameron, 'Civil Liability for Environmental Harm', in Colin T. Reid (ed.), *Environmental Law in Scotland*, 2nd edn (Edinburgh 1997), p. 175.
- 18 "More than is tolerable"
- 19 Criminal negligence
- 20 Brian Pillans, *Delict: Law and Policy*, 5th edn (Edinburgh 2014), p. 200.
- 21 *Suspension*, p. 6.
- 22 Robert Forsyth, *Answers for Robert Saunders, Alexander Philip, Hugh Dickson, John Aitcheson, James Forsyth, John Mitchell, William Miller, Andrew Tait, and Alexander Pringle, all Bakers in Edinburgh; William Dalziel and Alexander Dalziel, both Bakers in Leith; Thomas Veitch, Baker at Stockbridge, and Robert Brown, Baker at Fountainbridge, - Purchasers of Stockbridge Mill from Andrew Kedsilie and his Trustees, to the Condescendence of Henry Raeburn, Esq. of St Bernards and others* (19 Dec. 1815). The addresses the defenders are given in appx 2 below.
- 23 Priestley, *Water Mills*, p. 4.
- 24 Forsyth, *Answers*.
- 25 Forsyth, *Answers*.
- 26 Forsyth, *Answers*.
- 27 Duncan Thomson, 'Raeburn, Sir Henry (1756-1823)', *Oxford Dictionary of National Biography* (Oxford 2004; online edn October 2008 [<http://www.oxforddnb.com/view/article/23007>], accessed 10 Oct 2014).
- 28 Ibid.
- 29 Matthew Craske, 'Raeburn's First Biography: Allan Cunningham's Presentation of the Artist as Model Society Gentleman', in Vicky Coltham and Stephen Lloyd (eds), *Henry Raeburn: Context, Reception and Reputation* (Edinburgh 2012), pp. 292-93.
- 30 William Raeburn Andrew, *Life of Sir Henry Raeburn, R. A. with Portraits and Appendix* (London 1866), p. 22. Duncan Thomson's *ODNB* article on Raeburn corrects many of the myths created by Cunningham and Andrew.
- 31 Stephen Lloyd, "I Cannot Coin Money for Them": Raeburn and the Nexus of Patronage, the Art Market and Global Trade', in *Henry Raeburn: Context, Reception and Reputation*, ed. Vicky Cottam and Stephen Lloyd (Edinburgh 2012), pp. 35-65 at 35, 51-52.
- 32 Lloyd, "I Cannot", p. 58.
- 33 Raeburn retained a long-lease on his studio. Lloyd, "I Cannot", pp. 57-58.
- 34 Thomson, 'Raeburn, Sir Henry'.
- 35 Thomson, 'Raeburn, Sir Henry'.
- 36 James Watt, quoted in H. W. Dickinson and Rhys Jenkins, *James Watt and the Steam Engine: The Memorial Volume Prepared for the Committee of the Watt Centenary Commemoration at Birmingham 1919* (1927; repr. Ashbourne 1981), p. 84.
- 37 A. J. Youngson, *The Making of Classical Edinburgh* (Edinburgh 1966; repr. 1975), p. 212-13.

- 38 McLeod, *Agents of Change*, p. 91.
- 39 Ibid., p. 212.
- 40 Murray, *Cases*, p. 5.
- 41 Jury Trials (Scotland) Act 1815 (55 Geo. III c. 42). For the background to this introduction see John W. Cairns, “‘The Dearest Birth Right of the People of England’: The Civil Jury in Modern Scottish Legal History”, in John W. Cairns and Grant MacLeod (eds), *The Dearest Birth Right of the People of England: The Jury in the History of the Common Law* (Oxford 2002), pp. 1-15.
- 42 Cairns, “‘Dearest Birth Right’”, p. 11.
- 43 Cairns, “‘Dearest Birth Right’”, p. 13.
- 44 Cairns, “‘Dearest Birth Right’”, pp. 6-7.
- 45 *Edinburgh Evening Courant* (5 November 1814), p. 4.
- 46 *Edinburgh Evening Courant* (10 December 1814), p. 4. The idea was not new: Lord Swinton, for example, published his *Consideration Concerning a Proposal for Dividing the Court of Session into Classes or Chambers; and for Limiting Litigation in Smaller Causes; and for the Revival of Jury Trial in Certain Civil Actions* (Edinburgh 1789) decades before. Angus Stewart and David Parratt, *The Minute Book of the Faculty of Advocates*, vol. 4: 1783-1798 (Edinburgh 2008), p. 61, n. 95.
- 47 *Edinburgh Evening Courant* (29 December 1814), p. 3.
- 48 Ian Douglas Willock, *The Origins and Development of the Jury in Scotland* (Edinburgh 1966), p. 256.
- 49 Cairns, “‘Dearest Birth Right’”, p. 7.
- 50 Joseph Murray, *Reports of Cases Tried in the Jury Court, from the Institution of the Court in 1815, to the Sittings at Edinburgh ending in July 1818* (Edinburgh 1818), pp. 1-8.
- 51 Mona Kedslie McLeod, *Agents of Change: The Scots in Poland, 1800-1918* (East Linton 1999), p. 83.
- 52 William Clerk, *Issue in the Cause in which Henry Raeburn, Esq. of St. Bernard’s and Others are Suspenders, and Andrew Kedslie, Proprietor of Stockbridge Mill, is Charger* (20 December 1815).
- 53 An interlocutor was a special order (or in some contexts, a verdict) of the Court.
- 54 Jury Trial (Scotland) Act 1815.
- 55 Murray, *Reports*, p. 8.
- 56 *Edinburgh Evening Courant* (27 January 1816), p. 3.
- 57 Willock, *Origins*, p. 256.
- 58 *Edinburgh Evening Courant* (27 January 1816), p. 3; Murray, *Cases*, p. 4.
- 59 *Edinburgh Evening Courant* (27 January 1816), p. 3.
- 60 Murray, *Cases*, p. 4.
- 61 Dickinson and Jenkins, *James Watt*, p. 73. Jeffrey wrote an obituary for Watt after his death in August 1819. In it, he described Watt as ‘...the great improver of the steam-engine; but in truth, as to all that is admirable in its structure, or vast in its utility, he should rather be described as its inventor’. [Francis Jeffrey], ‘The Late Mr. James Watt’, *Scotsman* (4 September 1819), p. 285.
- 62 Murray, *Cases*, p. 6.
- 63 *Edinburgh Star* (23 January 1816), p. 3.
- 64 *Edinburgh Evening Courant* (27 January 1816), p. 3.
- 65 Jack Morrell, ‘Leslie, Sir John (1766-1832)’, *Oxford Dictionary of National Biography* (Oxford 2004) [http://www.oxforddnb.com/view/article/16498, accessed 12 Sept 2015].
- 66 *Edinburgh Evening Courant* (27 January 1816), p. 3.
- 67 Murray, *Cases*, p. 4.
- 68 *Edinburgh Evening Courant* (27 January 1816), p. 3. The washerwomen may have been residents of Virgin now Veitch’s Square. This was ‘one of most interesting and picturesque localities in Stockbridge’ featuring one story thatched cottages covered with flowers surrounding a bleaching green. The square was managed by Thomas Veitch who vetted respectable widows and spinsters as tenants ‘who took in washing’. Cumberland Hill, *Historic Memorials & Reminiscences of Stockbridge, The Dean, and Water of Leith with Notices, Anecdotes, Descriptive, and Biographical*, 2nd edn (Edinburgh 1877; repr. 1984), p. 22. Thomas Veitch, a Stockbridge baker, was one of those who bought Kedslie’s mill. He is listed among the purchasers of the Stockbridge Mill in Robert Forsyth’s *Answers*. This may raise a question about the veracity of the ladies’ testimony.
- 69 *Edinburgh Evening Courant* (27 January 1816), p. 3; *Edinburgh Star* (23 January 1816), p. 3.
- 70 *Edinburgh Evening Courant* (27 January 1816), p. 3.
- 71 *Edinburgh Star* (23 January 1816), p. 3.
- 72 Murray, *Cases*, p. 8. Kedslie’s son, Alexander, moved to Poland in 1829 to manage a steam mill at Solec in Warsaw. He managed this mill until 1836 when he became a farmer. McLeod, *Agents of Change*, p. 83. He brought ‘two millers with families from the mills of the water of Leith’ with him and his mill was noticed with approval by the Franklin Institute of Philadelphia. Thomas P. Jones (ed.), *Journal of the Franklin Institute of the State of Philadelphia and Mechanics Register Devoted to Mechanical and Physical Science, Civil Engineering, the Arts and Manufactures, and the Recording of American and other Patented Inventions* (Philadelphia 1840), p. 9.
- 73 Richard Rodger, *The Transformation of Edinburgh: Land, Property and Trust in the Nineteenth Century* (Cambridge 2001), pp. 8-9.
- 74 George Joseph Bell, *Principles of the Law of Scotland for the Use of Students in the University of Edinburgh* (Edinburgh 1829), p. 238.
- 75 Bell, *Principles*, p. 239.
- 76 Willock, *Origins*, pp. 259, 261.
- 77 *Scotsman* (8 March 1843).
- 78 *Scotsman* (2 August 1901), p. 9; *Scotsman* (17 July 1901), p. 9.
- 79 *Scotsman* (17 July 1901), p. 9.
- 80 *Scotsman* (2 August 1901), p. 9.
- 81 BBC News, “‘Loud’ Church Bell Stopped from Ringing in Edinburgh” (2 September 2014) [http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-29030882]
- 82 Beugo’s daughter Barbara married John Lauder’s son William in 1822. *Blackwood’s Edinburgh Magazine* (January 1822), p. 122.