

No 11.

put to execution, which was done by calling out certain inhabitants of the burgh of Paisley, among others in the county ; and this case being brought before the Court of Session by suspension, the Court found that the inhabitants of the town of Paisley may be called out to repair the high-roads.

*Sel. Dec. No 140. p. 196.*

No 12.

In boroughs, one may build as near the march as he pleases, providing no drop falls upon his neighbour.

1760. July 8.

CLARK *against* GORDON.

CLARK and Gordon had contiguous houses in the town of Kirkcudbright, with back yards extending behind each of them. Gordon had an old kitchen behind his house, built close upon the march betwixt the two yards. Clark, in the year 1755, built on his side a coal-house, the side-walls of which almost touched the wall of Gordon's kitchen. At the same time he also built an house of office, opening towards his own yard, the back wall of which came within about eighteen inches of Gordon's kitchen. Gordon thereafter pulled down his kitchen, and built it up a-new, in a better form, with more windows, towards Clark's yard ; and he thereupon brought a process before the Magistrates of Kirkcudbright, insisting, That Clark should be decerned to remove both his coal-house and house of office, as being built too near the wall of his kitchen. The Magistrates ordained both these houses to be pulled down ; and Clark suspended.

*Pleaded* for Gordon ; *imo*, With regard to the coal-house, That there must always be some space betwixt contiguous houses, which is regulated by the customs of particular boroughs : That in Kirkcudbright it is fixed at eighteen inches : That the coal-house in question touches the wall of the kitchen.

*Answered* for Clark ; That Mr Gordon never interrupted him when building his coal-house ; and therefore that it is too late to insist upon having it pulled down. Besides, as the coal-house is built with a shade-roof, sloping towards Clark's own yard, no drop can fall from it ; nor can it be in the smallest degree prejudicial to Mr Gordon's property.

*2do*, With regard to the house of office, it was *pleaded* for Gordon, That although every man may use his property in what manner he pleases, yet he must not do it *in emulationem vicini* : That there were many other more convenient places in Clark's yard, where such a house might be built : That it was offensive, and a very great nuisance to Mr Gordon.

*Answered*, That every man may build upon his own ground what houses he thinks proper, though they should be hurtful to his neighbour, unless he has a servitude.

" In regard Clark was not interrupted when building his houses, as the coal-house was built in such a form as that the easing-drop could not prejudice the

charger's property, and as an house of office is not declared to be a nuisance by the laws of Britain, the Lords suspended the letters *simpliciter*.

No 12.

Act. Swinton.

Alt. Arch. Murray.

Clerk, Home.

P. M.

Fol. Dic. v. 4. p. 200. Fac. Col. No 226. p. 418.

1760. August 5.

GEORGE BUCHAN of Kello, against CHARLES FREEBAIRN, Architect in Edinburgh.

SOME old houses upon the high-street, at the head of Cant's close, in Edinburgh, being taken down, a plan for rebuilding them of the height of five stories above the shops or ground-floor, was authorised by the guild-court, after citation of all the conterminous heritors, and no objection made.

After the building was carried to the intended height in the front by Charles Freebairn the proprietor, Mr Buchan complained, in a bill of suspension, of the raising the back part of the upmost story, as prejudicial to the lights of a house belonging to him in Dickson's land, which stands immediately to the west of the new building; and he insisted, That as by act 8th, Parl. 1698, it is provided, "That all new houses be built no higher than five stories above the causeway," this upmost story of the new building being the sixth from the causeway, could not be lawfully erected.

*Answered* for Charles Freebairn; *imo*, This objection comes too late, as it ought to have been made before the Dean of Guild granted warrant for rebuilding the house, according to the plan which has been since exactly followed out. *2do*, The practice of the city, authorised by warrants of the guild-court, has immemorially explained the act, so as to allow five stories above the shops in the front, and the story immediately above them is always held to be the first story, and so progressively. Custom or practice is sufficient even to abrogate statute-law, and much more to explain it; and it tends more to beautify the city, to allow the raising the front or side walls five stories above the shops, than to have such fifth stories made by projections, or stormonts, as they are called, in the depth of the roof, which is admitted to be subject to no prohibition by this statute. And, *3tio*, According to the words of the act, the computation of five stories from the causeway ought to be made from the highest part of the causeway adjacent to the house; and, in this case, the causeway of the close ascends from the street, so that the story on a level with the shops is, in the back part, opposite to the suspender's windows, almost entirely sunk below ground; and, consequently, the top-story in question is in that part only the fifth above the causeway, though, computing the shops, it is, at the front, the sixth above the level of the high-street.

No 13.

The act 1698, regulating the manner of buildings within Edinburgh, is still in force.