

No 27.

their houses seven feet into the street, upon their leaving these new fronts supported with pillars for the conveniency of passengers; Maitland's History of Edinburgh. The space, therefore, occupied by these piazzas is the property of the public.—At any rate, it has for ages been used as part of the public street, on which no private party, upon pretence of improvement, can be allowed to encroach. Nor can former precedents, occurring through the connivance or neglect of the Magistrates, and now sanctified by long possession, afford an excuse for new alterations. Although the Magistrates consented, every inhabitant of the burgh has a right to put a stop to them.

THE LORD ORDINARY “having visited the ground, repelled the reasons of suspension;” but the Court considering the alteration to be an encroachment on the public street, altered that interlocutor, and

“Suspended the letters.”

Lord Ordinary, *Kennet*. Act. *Nairne, Tytler*. Alt. *Maclaurin*. Clerk, *Home*.
C. *Fol. Dic. v. 4. p. 198. Fac. Col. No 105. p. 167.*

1788. July 19. DAVID GREGORY against DAVID and MARGARET BURT.

No 28.

A party building in virtue of a judge and warrant, must restore the subjects as soon as the sums disbursed by him have been recovered out of the rents.

THE predecessors of David and Margaret Burt having, under the authority of the Dean of Guild, rebuilt a house in the town of Perth, which belonged to David Gregory, he brought an action for recovering possession; alleging, that the money laid out in building had been fully repaid out of the rents.

Pleaded in defence; The law authorising the rebuilding of ruinous houses within burgh, was intended as a punishment on negligent proprietors, and at the same time to encourage other persons to employ their money in this way, *ne urbes ruinis deformentur*. When, therefore, it is declared, as has been done in the present case, by the sentence of the Dean of Guild, that the builders shall retain possession ‘until the full sums laid out by them are paid,’ it is obviously meant that the rents shall belong to them, till the owner appears and makes payment of what has been laid out. Without this, no one would be so imprudent as to employ his funds in this manner, as he could not in any event receive more than he had actually disbursed, and at the same time might lose every thing, if by any accident the buildings were destroyed.

Answered; If it had been intended to encourage mere money-lenders to employ their wealth in the reparation of ruinous houses within burgh, the defender's argument would undoubtedly be of some weight. But the framers of this regulation had nothing more in view, than to give to tradespeople an opportunity of getting employment for themselves; knowing that this would be a sufficient inducement to them. The words uniformly used in the proceedings before the Dean of Guild, obliging the builders to make restitution as soon as

the sums disbursed by them shall have been paid, would alone be enough to show this to have been the intention of the law.

No 28.

THE LORD ORDINARY found, " that the defenders were obliged to cede the possession, on receiving the sums ascertained by the decret of the Dean of Guild to have been disbursed in rebuilding the house, so far as they have not been compensated out of the rents."

After advising a reclaiming petition for David and Margaret Burt, with answers for David Gregory, the Court not unanimously affirmed the judgment of the Lord Ordinary.

Lord Ordinary, *Braxfield.* Act. *Cha. Hay.* Alt. *Ro. Craigie.* Clerk, *Sinclair.*

C. *Fol. Dic. v. 4. p. 199. Fac. Col. No 37. p. 61.*

1789. *June 20.*

The PROCURATOR-FISCAL of the County of Edinburgh, *against* THOMAS DOTT and ALEXANDER PATERSON.

THOMAS DOTT and Alexander Paterson purchased a small piece of ground for building, bounded on the north side by the road leading from the College to the Infirmary, and on the west by Nicolson's street. This piece of ground, being part of the old barony of Broughton, is not subject to the jurisdiction of the Dean of Guild in the town of Edinburgh.

No 29.

Act 1698, cap. 8. prohibiting buildings higher than five stories, extends to those suburbs of the town of Edinburgh which are not subject to the jurisdiction of the Dean of Guild.

After the building was nearly finished, a complaint was preferred to the Sheriff-depute of the county, in name of the Procurator-fiscal, setting forth, That the directions of the statute of 1698 had not been observed, the houses being more than five stories above the level of the street. Answers were given in for the defenders, in which they

Pleaded; By the common law, every person may build on his property to any height, provided he does not occasion some danger to his neighbours from the insufficiency of the work. It is true, that in 1698, this common-law right was restrained in a certain degree within the city and suburbs of Edinburgh, the Dean of Guild, whose jurisdiction not only extends over the royal burgh, but to Canongate, Potter-row, including Bristo street, &c., being directed to give out judges and warrants, under the limitations therein prescribed. But this enactment cannot have any influence on the present question. The Dean of Guild cannot interpose, because the ground on which the buildings are erected does not lie within his jurisdiction. And the interposition of the Sheriff of the county would be equally improper, as the execution of the statute has not been entrusted to him, but to the Dean of Guild.

Answered; The statute in question being founded in great expediency, ought not to be narrowed by a critical interpretation of its words. As the danger