

1803. May 12. SMELLIE and Another *against* STRUTHERS.

No 303.

A dean of guild has no power, for the sake of widening a street, to prevent a proprietor from building upon the limits of his property.

ROBERT STRUTHERS, brewer in Glasgow, being desirous to build upon a piece of ground which he possessed on the north side of Green Street, applied to the Dean of Guild Court, according to the practice of the burgh, to have the line of his intended building along the front of this street ascertained. The breadth of the lane was only 24 feet 9 inches; but the Dean of Guild ordained the building to be placed at the distance of 30 feet from the opposite side; by which judgment the front would have been made to recede several feet within the limits of Struthers' property.

A bill of advocation was presented by him, complaining of this judgment of the Dean of Guild; and the Lord Ordinary found, "That the Dean of Guild court has no power to line the south wall of Robert Struthers' intended tenement, so as to cut off any part of his property, in order to widen the public street or road."

A reclaiming petition against this interlocutor was presented to the Court by Richard Smellie, the master of works of the city, and the procurator-fiscal of the Dean of Guild court, in which they

*Pleaded*; Public utility requires, that individual proprietors of urban tenements should be prevented from an unlimited exercise of their right of property. Hence the regulations which prevail in most burghs with respect to the police of the town, and the form and height of the buildings, which are certainly encroachments upon the rights of individual proprietors, on account of general expediency. The rules of each burgh with regard to such matters, are to be explained by custom and usage; Erskine, b. 1. tit. 1. § 45; and the Dean of Guild, under the controul of the Supreme Court, is entrusted with a discretionary power of directing the buildings of the town; in the exercise of which he may, in particular circumstances, prevent a proprietor from building upon the extreme verge of his property; Erskine, b. 2. tit. 9. § 9. The Dean of Guild of Glasgow has immemorially exercised this power, which has been found greatly conducive to the convenience and elegance of the city; and the circumstances of the case require, that this lane, which has become one of the principal avenues of the town, should be made more spacious, which will not only be of advantage to the public, but will encrease the value of the adjacent tenements.

But the petition was refused, without answers, and expenses were found due from the date of the first interlocutor of the Lord Ordinary. The Court were decidedly of opinion, that neither the alleged usage of the Dean of Guild, nor

the expediency of widening this particular street, could confer upon that Magistrate the power of taking away any part of the property of individuals. No 303.

Lord Ordinary, *Craig*.  
Agent, *Wm. Buchanan, W. S.*  
Agent, *Jo. Dillon*.

For Master of Works, *Campbell, Connell*.  
Alt. Solicitor-General *Blair, Jardine*.  
Clerk, *Ferrier*.

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*Fac. Col. No 99. p. 219.*

\* \* \* Dean of Guild's powers in the removal of nuisances and deformities within burgh. *See PUBLIC POLICE.*

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DIVISION X.

Court of Exchequer.

SECT. I.

Extent of the Jurisdiction of this Court.

1733. December 4. HAMILTON *against* LEGRAND and PAGETER.

No 304.

AFTER the three years, within which time goods seized by the custom-house officers, as not having paid duty, must be condemned, action found competent at common law, and before any of the ordinary courts for wrongous seizure, where no prosecution was brought in Exchequer. *See APPENDIX.*

*Fol. Dic. v. I. p. 507.*

1734. July 12.

RECEIVER GENERAL of his Majesty's Customs *against* WILLIAM FOGO.

No 305.

A BOND taken by the officers of the customs from some persons art and part in defrauding the revenue, for a sum which it was computed the revenue had