

May 14. 1823. a rule on which we should proceed, because I observe they give expenses more regularly and uniformly than we do, yet I do think this is a case in which this man's wife—for such I take her to be—should be at no expense whatever; and therefore I am of opinion she should have the largest which the standing orders of this House will allow. Upon the whole I am of opinion that the judgments should be affirmed, the respondent having her costs and expenses as far as the standing orders of this House will permit, or so much out of the sum which the standing orders of the House will allow, as will be sufficient to pay all her expenses; and unless any of your Lordships happen to differ from me in the conclusions I have come to, I shall move that that be the judgment of the House.

*Appellant's Authorities.*—(1.)—1. Stair, 4. 26; 1. Ersk. 6. 3; Cameron, June 29. 1756, (12680); Johnstone, Nov. 18. 1766, (12681); M'Innes, Dec. 20. 1781, (12683); Hepburn, Nov. 18. 1785, (12686); Taylor, Feb. 16. 1786, (12687); M'Lauchlan, Dec. 6. 1796, (12693); Edmonston, May 15. 1804, (App. Proof, No. 1.); Macadam, March 4. 1807, (App. Proof, No. 5.)

*Respondent's Authorities.*—1. Ersk. 6. 2. and 5; 3. Ersk. 2. 22; Gordon v. Dalrymple, (Dodson's Report.)

C. BERRY,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 12.*)

No. 59. ANDREW GORDON, Appellant.—*Jeffrey—More.*

A. BOGLE, for the ROYAL BANK of SCOTLAND, Respondent.

*Property—Statute 57. Geo. III. c. 53.*—Held, ex parte, (reversing the judgment of the Court of Session,) that it is competent for the Dean of Guild of Edinburgh, under the above statute, to authorize proprietors of piazzas in Edinburgh to build them up.

June 4. 1823.

2D DIVISION.  
Lord Reston.

THE appellant Mr. Gordon was proprietor of a shop and cellar on the south side of the High street of Edinburgh, immediately to the west of the Royal Bank close. In front of the shop, and along the whole extent of the building, there was a piazza, with an area between the door of the shop and the foot pavement of the street. The property was thus described in the title-deeds:—‘ All and whole these two laigh booths, &c. upon  
‘ the south side of the High street, a little above the Cross, upon  
‘ the west side of the close formerly called the Master of Works  
‘ close, now the west entry to the Royal Bank close, bounded  
‘ between the lands sometime of Andrew Cooper of Fenton Barns;  
‘ on the south; the lands sometime of Mr. John Adamson, advocate, upon the west; the said close, of old called the Master of  
‘ Works close, upon the east; and the High street of Edinburgh  
‘ upon the north parts.’

June 4. 1823.

Formerly the High street of Edinburgh contained a number of similar piazzas, under which passengers occasionally walked; and in 1783 the Court of Session found, in a case *Forbes and Others v. Ronaldson*, that they formed part of the public street, and that any member of the community was entitled to resist any encroachment upon them. In consequence of this decision, a clause was introduced into the police statute, 45th Geo. III. c. 21, empowering the Dean of Guild to authorize the proprietors of the respective tenements to build up these piazzas. When, however, this statute expired, and a new one, the 52d Geo. III. c. 172, was passed, this clause was omitted, as was alleged, *per incuriam*.

Mr. Gordon, being ignorant of this omission, applied to the Dean of Guild for authority to build up the piazza, and bring forward his shop, so as to be in a line with the pillars. This having been resisted by Mr. Bogle on behalf of the Royal Bank, whose property was in the immediate vicinity, the Dean of Guild found, ‘ that although, by the 29th section of the act 45th of the King, ‘ c. 21, it was declared lawful to this Court to authorize the proprietors of shops and houses fronting the streets, situated in piazzas ‘ behind pillars, to bring forward their respective shops and houses ‘ to the front of the said pillars, so as to include the area of the ‘ said shops and houses; yet no application having been made to ‘ this Court by the petitioner Mr. Gordon during the subsistence of the said act, and the same having been repealed by a ‘ subsequent statute, (the 52d of the King, c. 172,) commonly ‘ called the Police Act, the rights of the parties remain the same ‘ as before the first-mentioned act was passed; and therefore, in ‘ respect of the decision of the Court of Session in the case of ‘ Sir William Forbes *v.* Ronaldson, 3d March 1783, dismisses the ‘ present application.’ After this decision was pronounced, a supplementary statute, 57th Geo. III. c. 53, was passed, by which power was given to the Dean of Guild, in reference to houses under which there were piazzas, ‘ to authorize the proprietors of ‘ shops and houses so situated as aforesaid, to bring forward the ‘ same to the front of the said pillars, so as to include the areas of ‘ the said piazzas, and recesses in the said shops and houses, and ‘ to alter the doors and windows of the said shops and houses, in ‘ order to give light and entry; but, in effecting these purposes, ‘ no encroachment shall in any case be made upon the streets, ‘ public entrances, and foot pavements.’ After this statute was passed, Mr. Gordon again applied to the Dean of Guild for authority to build up the piazzas, which was resisted by Mr. Bogle, who contended that as it had been decided by the above case

June 4. 1823. that they formed part of the public street, and the statute declared that no encroachment should be made on the street, it was not competent to authorize them to be built up. The Dean of Guild, however, 'in respect of the terms of the act of Parliament founded on,' granted the warrant prayed for; and in an advocacy, the Lord Ordinary, 'in respect that the intended alterations complained of are sanctioned by the existing police act,' remitted simpliciter; but the Court altered, advocated the cause, and dismissed the original petition, 'in respect that by the police act no encroachment shall in any case be made upon the streets, public entrances, or foot pavements.' And to this interlocutor their Lordships adhered on the 21st of May 1819, by refusing a petition without answers. \*

Mr. Gordon then appealed, and contended that by the terms of his title-deeds he had right to the whole area under the piazzas, extending to the foot pavement:—that by the statute 57th Geo. III. c. 53, authority was given to build up these piazzas; and therefore, that even if the areas could be considered as part of the public street, they thenceforth ceased to be so:—that the condition of not encroaching on the streets and foot pavements plainly applied, not to the area under the piazzas, but to that which was the usual and regular thoroughfare, and, in the proper acceptation of the word, the public streets, on which he did not mean to make any encroachment.

No appearance was made for Mr. Bogle, and the House of Lords 'ordered and adjudged, that the said interlocutors complained of in the said appeal be, and the same are hereby reversed.'

J. RICHARDSON,—Solicitor.

(*Ap. Ca. No. 13.*)

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\* Not reported.