

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

No 29. to be avoided from the exorbitant height of the buildings, is as great in the avenues to the town as in the town itself, the same rule ought equally to apply to both. Indeed the use of the word 'suburbs,' which is of an indefinite import, including whatever buildings, in the gradual enlargement of the town, may fall under that description, would be enough to show this to have been the intention of the legislature. As to the mention which is made of the Dean of Guild, this was only intended to press the observance of the law on that Magistrate, who, from the nature of his office, would have must occasion to attend to it, and cannot be thought to exclude the interposition of the Judge Ordinary in those cases where the Dean of Guild from a limitation of his judicial authority is prevented from interfering.

It was also *pleaded* by the defenders, That the buildings erected by them were not prohibited by the enactment, as they consisted only of five stories, what was called a sixth being no more than a French roof, including a tympany in the centre of the building.

The Sheriff Depute "repelled the declinature; and found, that the building in question was one story higher than it ought to be, and ordered the same to be reduced to five stories."

A bill of advocation was preferred by Thomas Dott and Alexander Paterson, which being followed with answers, replies, and duplies, was reported by the Court.

THE LORDS remitted to the Lord Ordinary to refuse the bill.

Reporter, *Lord Hailes.* Ac. *Solicitor-General.* Alt. *Dean of Faculty.*

*C.* *Fol. Dic. v. 4. p. 198.* *Fac. Col. No 74. p. 134.*

No 30.

1794. *May.* PALMER and Others *against* MACMILLAN.

MACMILLAN a butcher, having a house in Chapel Street in the south suburbs of Edinburgh, which had an area about nine feet wide in front, divided from the street by a parapet wall, and likewise a small area behind, was in use to slaughter cattle in the back area, and expose the butcher-meat for sale in the front area; both which practices were complained of as nuisances by the neighbourhood. In an advocation from the Sheriff, who decerned in both articles against the defender, the LORDS found, that the slaughtering cattle in the back area was a public nuisance, and that the defender had no right to practise it; but that he was entitled to expose his meat for sale in the front area, provided he erected a shed over the place on which it was hung, and paved the area with stones. See APPENDIX.

*Fol. Dic. v. 4. p. 199.*