

APPENDIX.

PART I.

PROPERTY.

1799. Nov. 16.

ALEXANDER REID *against* WILLIAM NICOL.

ALEXANDER REID was proprietor of the two upper storeys of a house in Rose Street, Edinburgh, the sunk and first floors of which, belonging to a different person, were possessed by William Nicol.

The whole entered by a passage nine or ten feet long, the door of Nicol's house being at the inner extremity of it.

By Nicol's lease, he was entitled to convert a front room into a shop, and make a door to it through a partition wall in the passage.

On his doing so, Alexander Reid complained to the Dean of Guild, that this new door would diminish the value of his property, by incommoding the passage; and that at any rate, upon the principle of the case, 20th June 1799, Anderson against Dalrymple, Nc. 41. p. 12831., no alteration could be made on it without his consent.

The Dean of Guild ordered the door to be built up.

Lord Craig refused a bill of advocation.

A second bill having come before Lord Meadowbank, the following interlocutor was pronounced: "Having considered this bill, with the former proceedings, and inspected the premises; In respect of the decision of the Court last summer session, in the case of Bailie Dalrymple and others, where a partition wall between a shop and a passage to a common stair seemed to be considered as the common property of the proprietors of the different storeys, so that no opening could be made in it without the consent of the whole of said proprietors, refuses the bill; but being nevertheless of opinion, that the opposition to the door in the pre-

NO. 1.

In a house of several storeys, belonging to different proprietors, all entering by the same passage, no alteration can be made on the passage, without the consent of the whole.

NO. 1. “ sent case, is not founded in any substantial interests, from any impending danger to the property of the opposers, and being under some doubt as to the soundness of the principle above mentioned, (a doubt founded on Stair, B. 2. T. 7. § 6. ; Ersk. B. 2. T. 9. § 11. ; and decision, Robertson against Ranken, 3d March 1784, No. 37. p. 14534., as well as the custom of Edinburgh, whereby the common passages and stairs are maintained in repair at the sole and separate expence of the proprietor of the upper storey); and also observing, that in this case, there is no need of altering in any respect the outer door of the common passage, sists execution till the first Monday of this vacation, and if a petition to the Court is then boxed, sists execution further till the same be disposed of.”

A petition was presented on the grounds mentioned in the interlocutor.

The Judges in general adopted the principle of the decision, Anderson against Dalrymple, and on that ground, viz. that the passage was common, the Lords refused the petition.

Lord Ordinary, *Meadowbank*.

For the Petitioner, *O. H. Wemyss*.

R. D.

Fac. Coll. No. 143. p. 320.

1800. *January 24.* JAMES BRAID, *against* Colonel DOUGLAS.

NO. 2.

When a private river separates the property of two heritors, the one retains his right of preventing the other from diverting part of the stream, though the predecessors of the former had taken off a cut from it, on his side, for a

THE lands of Ryelaw, belonging to James Braid, are separated from the lands of Strathendry, the property of Colonel Douglas, by the river Leven in Fifeshire. The proprietors of Ryelaw had been in possession of a dam-dike across the river, erected for the purpose of catching eels, by a cruive on their side of it.

A short way below this, the proprietors of Strathendry have right to a dam-dike, stretching across the river, from which a lead has been taken off on their side for time immemorial, for the purpose of supplying a waulk-mill: The water is not returned opposite to Ryelaw.

About 1780, Colonel Douglas feued ground for a bleachfield, which is supplied with water from this lead; but no alteration was then made on the dam-dike.

In 1789, Braid proposed to enlarge the Ryelaw dam; and, for the purpose of erecting a lint-mill, to make a cut on his lands, by which a consi-