

1817.

 JOHNSTONE
 v.
 CHEAPE, &C.

“ so that none of the lands belonging to, or possessed by,
 “ any of the parties in the submission, shall be injured
 “ by neglecting such repairs, and decerns and ordains
 “ the person or persons failing so to do, not only to per-
 “ form these stipulations, but also to pay whatever
 “ damage may be sustained by any of the other parties,
 “ in consequence of such neglect, as the same may be
 “ ascertained by fit neutral men,” had no authority so to
 decern and ordain; but that this ought to be held *pro
 non scripto*, and to be considered as an excess not vitiat-
 ing the other parts of the decret-arbitral. And it is
 further ordered, that with this finding, it is ordered and
 adjudged, that the cause be remitted back to the Court
 of Session, to vary the said interlocutors, so far as this
 finding may require the same to be varied. And it is
 ordered and adjudged that the said interlocutors, in all
 other respects be, and the same are hereby affirmed.

For the Appellant, *Sir Saml. Romilly, Geo. Cranstoun.*

For the Respondents, *John Jardine, And. Clephane.*

NOTE.—Unreported in the Court of Session.

1817.

 THE DUKE OF
 BUCCLEUGH
 v.
 MONTGOMERY,
 &C.

HIS GRACE THE DUKE OF BUCCLEUGH AND QUEENSBERRY,	<i>Appellant;</i>
SIR JAMES MONTGOMERY of Stanhope, Bart., THOMAS COUTTS, Esq., Banker, London, WILLIAM MURRAY, Esq. of Henderland, and Others, Executors and Trust Disponees of the late Wm. Duke of Queensberry,	} <i>Respondents.</i>

House of Lords, 10th July 1817.

This case was remitted for re-consideration, and is fully reported under the second appeal, together with all the other appeals in the Queensberry and Neidpath entails, in 1819.

1817.

 THE DUKE OF
 BUCCLEUGH
 v.
 HYSLOP.

DUKE OF BUCCLEUGH AND QUEENSBERRY,	<i>Appellant;</i>
JOHN HYSLOP, Tenant in Halscar,	<i>Respondent.</i>

House of Lords, 10th July 1817.

1817.

This case was also remitted for reconsideration; and is reported in the second appeal, along with the whole other cases in the Neidpath and Queensberry entails, in 1819. *Vide infra.*

THE DUKE OF
BUCCLEUGH
v.
HYSLOP.

JOHN GORDON, Esq. of Cluny, *Appellant*;

1818.

JOHN MARJORIBANKS, FORBES HUNTER
BLAIR, and WM. HAGGART, Esqs., Trus- }
tees for the New Club, } *Respondents.*

GORDON
v.
MARJORI-
BANKS, &C.

House of Lords, 18th February and 2d March 1818.

BUILDING PLAN—DEVIATION—CHARTER—NUISANCE.—Held (1.)

That the respondents, proprietors of a house in St Andrew Square, were not prevented from erecting on their back area the buildings in question, by the original plan of the new town of Edinburgh. (2.) That they were not restrained, by their charter, from making such erections; and (3.) That the proprietors on each side of the respondents' property, had no right to restrain them either on the ground of nuisance, or on the ground of holding any servitude, legal or conventional, over them.

The district of the city of Edinburgh, which is called the New Town, was begun to be erected in the year 1767. The grounds on which this new city was proposed to be erected, belonged to the Corporation of Edinburgh, who caused a plan to be made, in which, as the appellant stated, the great object was, to avoid the inconveniences experienced in the Old Town, by the buildings being crowded together, and a free circulation of air thereby prevented. Spacious streets and squares were delineated, and the spaces or lots on which the buildings were to be erected, were marked on the plan by letters, to which reference was made, in the conveyances to the purchasers of the several lots. This plan was engraved and published in every way possible, and universally understood, as showing how the new buildings were to be carried on, and the open spaces left.

That which is now called St Andrew Square, was first built, and in the centre of it a considerable space was left railed in from the circumjacent street, which was to be common to all the proprietors of houses in the square. Divided from this area by the streets, were the grounds on which the