

1688. February 2.

Bailie WILSON against ROBERT RICHARDSON.

THE case of Bailie Thomas Wilson against Mr Robert Richardson, writer, was reported by Lochore. Mr Robert had taken down an old land, which had a timber fore-stair, and was re-building it; but he was re-edifying the fore-stair with plaister, and attempting to carry it so up to the top, seven story high. Thomas Wilson and the neighbouring heritors opposed this, as obstructing their lights, making their chimneys smoke, and by the vicinity endangering them with fire, and theft; for they might step out of one window into the other; and the Dean of Guild of Edinburgh having discharged him, he suspended, *alleging*, The late act of the Town and Privy Council for building in stone, in 1645, allows the fore-stairs to be re-built of the same extent as formerly, that is, no broader nor wider, but provides nothing against heightening them. *Answered*, *Extensio* is all the three dimensions, and comprehends *altitudo* as well as the other two; and the tolerance is only *interdictum uti possidetis*, to have it no otherwise than it was before; and though the adjacent tenements have no servitude *altius non tollendi* upon it; yet *Sneidwin* and *Vinnius ad § 1. Institut. de Servitut. prædior.* give another exception, *viz. nisi statuto civitatis certa ædificiorum forma sit præscripta*, as here; and though *cujus est solum ejus est usque ad cælum*; yet here he has not the *solum*, the ground being the vennel and King's high-street, and he has only a *protectum* cast out. THE LORDS found he could not make this fore-stair higher than it was formerly.

*Fol. Dic. v. 2. p. 274. Fountainhall, v. 1. p. 495.*

1698. December 14.

JOHN HALL against BESSY CORBET.

JOHN HALL, chirurgeon in Glasgow, being heritor of a shop there, and the tenement immediately above it belonging to Bessy Corbet, relict of Robert Saunders, printer, he, for his accommodation, strikes out a chimney in the wall; and when he comes to her tenement, he was to break a hole through the wall of the gavel and carry it up without. She applies to the Dean of Guild, and procures a stop till visitation; who, after inspection with his council, found the same could not be done without her consent. Of this decret he raises reduction upon iniquity, that *nuntiatione novi operis* he could not be hindered to stop his own wall beneath the flooring and joists of the defender's story, seeing *cuique licet quilibet facere in suo dummodo in alienum nihil immittat*, and she has no prejudice. *Answered*, That his inferior tenement was liable in the servitude *oneris ferendi*; or support to her superior tenements, and if this stopping were allowed, the wall might be so weakened as may occasion at some time or other its falling, besides the deformity of carrying up a lum at the back of her wall, and that it would fill her house with smoke *immissione fumi in fe-*

No 8.

Found, that though the neighbours had no servitude, *altius non tollendi*, one could not build a fore-stair higher than formerly.

No 9.

Servitude, *oneris ferendi*, prevents an heritor of an inferior tenement from breaking his wall, so as to endanger that of the superior.