

tatute; and found the Justices liable in restitution of the goods, and in expenses of process.

No 14.

Fol. Dic. v. 4. p. 201. Fac. Col.

* * * This case is No 352. p. 7642, *voce* JURISDICTION.

1762. February 26.

PROPRIETORS IN CARRUBBER'S CLOSE *against* WILLIAM REOCH.

In August 1758, several houses in Carrubber's close were destroyed by fire, which begun in the shop of William Reoch wright. He having begun to rebuild his shop, and to fill his area with timber as formerly, the neighbouring heritors applied to the Dean of Guild-court, setting furth the danger of fire, and that a wright's shop in the middle of a crowded town was a public nuisance; and, therefore, praying an order upon Reoch to remove his timber, and to desist from building. This complaint being advocated to the Court of Session upon the pretext of delay of justice, it was doubted whether a case of this nature be at all competent to be determined by the Court of Session. Judges can decern for reparation of damage done. It belongs to Magistrates to prevent damage where it is imminent. They can pull down an old house which may fall upon passengers; and they can pull down any house to prevent the spreading of fire. They can no more, which is to remove a public nuisance. Therefore, the present case, which resolves into a regulation for preventing fire, is not the province of the Court of Session, but belongs to the Dean of Guild, a Magistrate, who, like the Roman *Ædile*, has a superintendency of buildings within town. The Court of Session indeed may correct unsuitable regulations made by the Dean of Guild, upon the principle that every evil must have a remedy. Upon this account chiefly was the cause remitted to the Dean of Guild, with an instruction to proceed without delay.

A cause of the same nature betwixt Wood and Duncan, on the one part, and George Sandeman, wright in Perth, on the other, concerning a wright's shop in the town of Perth, was the same day, and for the same reason, remitted to the Dean of Guild.

Sel. Dec. No 192. p. 256.

1762. February 27. MAGISTRATES OF MONTROSE *against* SCOTT of Brotherton.

THE Murray-street of Montrose runs for about 1200 feet from north to south, and is of a great breadth, particulary at the south end it is 150 feet broad. At that end stands the church, an old town-hall, and a guard-house. The Ma-

No 15.

A wright's shop in the middle of a crowded town is a public nuisance, as being liable to fire. It is the province of the Dean of Guild to remove that nuisance, not of the Court of Session.

No 16.

No building can be erected upon the public streets of a town.