

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.

No 16.

gistrates resolved to erect a building in the front of these, facing down the street, which might be used as a town-hall, an assembly or concert-room, and the piazzas below might serve as an exchange, where merchants might walk, and where commodities might be exposed to sale, which are in danger of suffering by the injuries of the weather.

Brotherton presented a bill of suspension, and insisted, *imo*, That no building can be erected, or encroachment made on the public street of a town: That this was reckoned *purpresture* by our old law. *2do*, That this building will come within nine feet of a house belonging to the suspender, will darken his windows, and make the entry to his house very inconvenient.

*Answered*; That this does not deserve the name of an encroachment upon the street: That it is only filling up an open area, which could not be better occupied than by a building, which must be so useful and ornamental to the town. To the *second*, That it can do little harm to the suspender's house; and a trifling private inconvenience ought not to be set up in opposition to the public good: That a case occurred in 1755, in the town of Aberdeen, similar to the present in all its circumstances: The Magistrates allowed the society of Free Masons to build a house for an inn and a mason-lodge, encroaching further on the street than in the present case, and within three feet of a house belonging to one Swinton: That he presented a bill of suspension, which was refused, and the house was accordingly built.

" THE LORDS suspended the building."

Act. *Wight*.

Alt. *Burnett & Patrick Murray*.

*Fol. Dic. v. 4. p. 198. Fac. Col. No 85. p. 189.*

1765. June 19.

JOHN MOWAT, late Mealmaker in Edinburgh, *against* The LORD PROVOST, MAGISTRATES, and TOWN-COUNCIL, of the City of Edinburgh.

No 17.

To what extent a burgh liable to repair damage done to a house by a mob?

By a statute 1st Geo. I. it is, *inter alia*, enacted, ' That all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling-house, barn, stable, or outhouse, which shall be demolished or pulled down, in whole, or in part, within Scotland, by any persons unlawfully, riotously, or tumultuously assembled, shall and may be covered by a summary action, at the instance of the party aggrieved, his or her heirs or executors, against the county, stewartry, city, or burgh, respectively, where such disorder shall happen, the Magistrates being summoned in the ordinary form, &c.

Mr Mowat brought an action against the Magistrates of Edinburgh, libelling upon this statute, and subsuming, that, without his having given offence, or cause of provocation, to any person whatever, upon the days and nights of the