

SECT. V.

SERVITUS LUMINUM.—Servitude whether implied in a common Tenement within Burgh.

1678. February 5.

OGILVIE against DONALDSON.

No. 36.

ALLEGED a tolerance for light imports only *servitus luminis*, and not *prospectus* or *projectionis*. The Lords found a tolerance for a servitude of light, did not imply a liberty of having open windows to the close, and that the defender might build any thing he pleased, and to what height he pleased, before these windows, at an ell's distance, whereby the light would be free; and that he was not obliged for greater distance, even in the country where parties have large closes and fields to build on; and so rejected his declarator, that the defender had not liberty to dim his lights by peat stacks, &c. in the town of Elgin.

Fol. Dic. v. 2. p. 374. Fountainhall MS.

1784. March 3.

ALEXANDER ROBERTSON and Others, against GEORGE RANKEN.

No. 37.

The proprietors of the upper stories of a tenement have not an implied servitude on those below, to the effect of preventing the owners of the last from making such alterations on their respective parts of the walls as do not endanger the rest of the building.

Mr. ROBERTSON and others were proprietors of the upper stories of a tenement, the ground floor of which belonged to Ranken. Purposing to strike out some new doors and windows in that under part of the wall, Ranken applied for the authority of the Dean of Guild's court, which appointed a visitation of tradesmen, in order to ascertain whether the proposed alteration would be attended with any danger to the building. The other proprietors, conceiving that however innocent such an operation might be, and however advantageous to the party, yet not being justified by necessity, it was illegal without their consent, brought the Dean of Guild's sentence under review by advocacy, and

Pleaded: Wherever a tenement consists of several stories, belonging to different proprietors, it is implied in the right of each, that without his consent no material alteration that is not necessary, can be lawfully made on the plan of the building in general; because that right comprehends this as well as other circumstances of his property. Thus the various owners come to have a mutual or common interest in all the different portions of the fabric; which, if it be not so extensive as the right of property, is not on that account the less entitled to protec-