

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

23rd, 23^d, and 23^d of November 1763, his house was invaded, his family insulted, and his house and furniture demolished, in a lawless manner, by a number of persons riotously and tumultuously assembled; and concluding for damages done to his house and furniture, to the amount of L. 51 : 7 : 10 Sterling, as computed at moderate prices, or ascertained by the accounts of wrights, glaziers, and other tradesmen.

The Magistrates answered, That it was true, a mob or riot had happened at the time libelled, and that the rioters had gone into the pursuer's house, damaged his windows, and carried off furniture and other moveables, to what extent the defenders could not say, though they believed the account given in by the pursuer might be very just; but that, as the act on which the process was founded introduces an extraordinary action for reparation, *extra communes juris regulas*, it ought to be strictly interpreted, and reparation only awarded to Mr Mowat for damage done to his house, not for furniture or other moveables stolen out of it. The words of the statute do not extend to these last; and it would be very dangerous to carry his indemnification so far; for he would be equally entitled to insist that the defenders should make good to him any sum of money that might have been taken out of his house; and the proprietors of either of the Banks, in case of their offices being demolished, and their whole cash and notes being carried off, would be equally entitled to insist, that the town should make up to them that immense loss. That, if the Court shall think the pursuer entitled to reparation in whole, or in part, as it is clearly not the intendment of the statute that the Magistrates should make good the damage out of their own private estates, or the common good of the burgh, but that it should be levied from the inhabitants of the burgh in which the damage was done, the Court would fall to direct in what method the sum should be levied, and allow a reasonable time for that purpose.

Replied for the pursuer; The statute must be interpreted so as not to run it into an absurdity; but it would be absurd to award the pursuer reparation for damage done to a stone or a window in his house, and yet refuse it him for the destruction of his furniture. Had the statute enacted, that, whoever burnt a dwelling-house should be liable to repair the damage, it could not be seriously argued, that the enactment only extended to the bare walls of the house, but did not comprehend the furniture. The two expressions which the act makes use of, viz. demolishing and pulling down, extend both to the walls and furniture, though, perhaps, they would not to money or goods in the house for sale, these not being necessary for the purpose of dwelling or habitation. As to the method of levying what shall be awarded in name of damages, that may be done by a taxation on the inhabitants of the burgh, in the same way as other taxations are levied; but with this the pursuer has no concern.

Observed on the Bench; An action of this kind was brought at the instance of one Straiton against the Town of Montrose, and the Court, by interlocutor 8th February 1743, refused to give reparation for any thing but damage done.

No 17. to the house. A distinction should be made between what is fixed, and what not. Damage done to the first should only be repaired.

“ THE LORDS found the defender liable for the damage done to the house, but not for that done to the furniture. See APPENDIX.

Reporter, *Auchinleck.* Act. *Henry Dundas.* Alt. *Montgomery.*

J. M. *Fol. Dic. v. 4. p. 197.* *Fac. Col. No 15. p. 25.*

1769. *March 7.*

MARGARET, ELIZABETH, AGNES, and ISOBEL GARIOCHS, against Mr ROBERT KENNEDY.

No 18.

Stillicide.

THE LORDS refused a petition, reclaiming against an interlocutor of the Ordinary upon the bills, refusing a bill of advocacy of a decree of the Dean of Guild of Edinburgh, by which it had been found, that, though 18 inches must be left free between two buildings in burgh, where there are two eave-drops, yet, where the new building is so constructed, as that there is but one eave-drop, nine inches are sufficient.

This rule, it was observed upon the Bench, is not founded in written law, but upon general custom.

Act. *W. Baillie.* Alt. *A. Fergusson.* Clerk, *Kilpatrick.*

G. F. *Fol. Dic. v. 4. p. 198.* *Fac. Col. No 96. p. 176.*

1774. *November 15.*

JAMES BUCHANAN, Dean of Guild of Glasgow, against PATRICK BELL.

No 19.

Whether the dean of guild has power to make general regulations for removing what, though not strictly a nuisance, may be deemed a deformity, and prove discommodious to the inhabitants and the public in general?

MANY of the inhabitants of Glasgow had a practice of fixing large shades, or water-barges, on the fronts of their houses, in order to convey the water from them. It was represented to the Dean of Guild, That these water-barges were exceedingly prejudicial; that not only they were ugly to the eye, and hurt the regularity and beauty of the streets, but, by projecting considerably beyond the houses, they encroached upon the street, and rendered it in some places very narrow; that, besides, they collected the water which fell upon the tops of the houses, and threw it out upon the streets, by which means the streets were often covered with water, and the rain, so collected in these water-barges, was poured upon the inhabitants, as they passed along the streets.

This matter being enquired into by the Dean of Guild Court, in April 1773, the Court ordered these water-barges to be taken down against the 1st of May;