

The Court, after having advised with military gentlemen, adhered to the interlocuter of the Lord Ordinary, 20th Feb. 1808. No. 20.

Lord Ordinary, *Polkemmet.* Act. *J. A. Murray.* Alt. *F. Jeffrey,*
Geo. Andrew and *Pat. Orr,* W. S. Agents. *M. Clerk.*

J. W.

Fac. Coll. No. 33. p. 115.

1808. *May 24.*

JOHN REID, JOHN BURNET, and Others, *against* JOHN and ANDREW NEIL.

ON the 14th February 1781, an act of the Town Council was passed, regulating the height of the buildings in the New Town of Edinburgh. This act was enlarged and explained by certain other acts in the year 1784, and on the 29th June 1785. By these it is enacted, That the Streets interjected between, and running parallel to, the great Streets of Prince's Street, George Street, and Queen Street, "shall not exceed two stories, exclusive of the sunk and garret story; and that no floor shall exceed eleven feet in height, including the joisting and floor, at least that the whole height of the side wall, from the floor of the sunk story, shall not exceed 33 feet."

No. 21.

The act of the Town Council 1785, relative to the buildings in Edinburgh, applies also to those within the new Extended Royalty.

The lot of ground now occupied by Clyde Street, lying on the south side of York Place between St. Andrews Square and Elder Street, was originally, according to the plan adopted by the Town, intended to be occupied by courts of stables and offices.

The pursuers, certain proprietors in York Place, thought it would be more advantageous to their properties if a certain portion of this lot were added to the back ground attached to their houses, and the remainder were occupied by houses similar to those in Thistle Street and Rose Street. The original plan was abandoned. The whole lot on which Elder Street and Clyde Street stand was exposed to public sale; and was purchased by the pursuer, Mr. Reid, (7th May 1800.) In the articles of roup, no limitation is imposed on the height to which the houses in Clyde Street might be raised. The 5th article stipulated, "In order to prevent any deviation from the mode of building hereby laid down, it is agreed that, before any building is begun on any of the streets, or lanes, the purchaser, or purchasers thereof, shall produce to the Lord Provost, Magistrates, and Council, an elevation of the building intended to be erected on any of the said streets, or lanes, to be by them approved of; and which elevations, if approved of by the said Lord Provost, Magistrates, and Council, shall be signed by the Lord Provost, or preses, and the purchaser and when so approved of, the same shall not, in any particular, be departed from, without the express consent of the said Lord Provost, Magistrates, and Council, had and obtained for that purpose in writing."

No. 21.

Mr. Reid retained part of this lot, on which he built the north side of Clyde Street; and conveyed to Mr. Young the southern part of the lot.

The defenders, John and Andrew Neil, acquired this southern lot from Young; and gave in a plan and elevation of their intended buildings, in which they proposed to construct houses of 43 feet in height, and consisting of three stories, besides attic and sunk stories. The plan was approved of by the Lord Provost and Magistrates (29th July 1807.)

The defenders then applied to the Dean of Guild, who permitted them to proceed to build according to their plans and elevations.

Against this deliverance, the pursuer, Mr. Reid, who was proprietor of the north side of Clyde Street, and certain persons, proprietors in York Place, presented a bill of suspension and interdict: And the case came to be discussed before Lord Robertson, Ordinary.

The pursuers maintained that Clyde Street was merely a continuation of Thistle Street; and must be regulated by the act of Council 1785, which restricts such streets to the height of 33 feet. This act of the Town Council is still in observance, 17th February 1803, Campbell against Lindsay, No. 13. *supra*.

The defenders maintained, that the act of Council was passed for the regulation of that part of the New Town included between St. Andrews Square and Charlotte Square, Queen Street, and Princes Street, built according to the plan furnished by Mr. Craig; and had no reference to future plans, to which it might be totally inapplicable.

The Lord Ordinary pronounced the following interlocutor, (23d Jan. 1808;)

“ Finds that the areas on which the houses in dispute are building, were purchased by the suspender, Mr. Reid, in May 1800, and were conveyed by him to Mr. Young, from whom Messrs. Neil derive right; finds that there is no limitation as to the height of the houses to be built on said areas, either in the articles of roup, under which Mr. Reid purchased, or in any of the subsequent conveyances thereof; farther finds, that the Messrs. Neil are not restrained, by the general regulations established by the Town Council of the City of Edinburgh, as to buildings in the Extended Royalty, from raising the side walls of the houses in question to the height which they propose, in respect that the act of Council, of date 29th June 1785, on which the suspender founds, as limiting the height of the side walls to 33 feet, does not appear to the Lord Ordinary to apply to Clyde Street, which was not a part of the plan of the Extended Royalty in the year 1785, when that act of Council was passed; and it does not appear to have been the intention of the Lord Provost, Magistrates, and Council of Edinburgh, and Governors of Heriot's Hospital, by whom Clyde Street was feued; to subject the houses to be built in that street to the limitations imposed by said act of Council, as none such are imposed either *per expressum*, or by reference to the said act; therefore, finds that John and Andrew Neil are at liberty to build the walls of the houses in question, in the manner specified in the deliverance of the

“Magistrates and Council of the City of Edinburgh, of date 29th July 1807; No. 21.
“repels the reasons of suspension.”

The Court, however, were of opinion that the act of Council 1785 applied to Clyde Street; that the proposed buildings must be restricted to 33 feet in height; and that the act of Parliament, while it authorises the still further extension of the Royalty, must be understood at the same time to have carried along with it, and to have imposed, all those existing regulations touching the police of building which had been previously established.

The Lords (24th May 1808) altered the interlocutor of the Lord Ordinary; and found that the regulations in the acts of Council of the 14th February 1781, the 15th of September 1784, and the 29th June 1785, extend to the buildings in question,—Therefore altered the interlocutor reclaimed against, and found that the respondents cannot raise their buildings higher than is allowed by the fourth clause of the regulations of 29th June 1785, and remitted to the Lord Ordinary to adjust the plan of the buildings, agreeable to these regulations, and to do farther in the cause as to his Lordship shall seem just.

Lord Ordinary, *Balmuto.*

Act. *Advocatum.*

Alt. *Rob. Forsyth.*

Will. Johnston and Nath. Grant, Agents.

M. Clerk.

J. W.

Fac. Coll. No. 42. p. 150.

1808. *July 5*

BAKERS OF PERTH *against* JOHN GLOAG, JAMES STEWART, and Others.

In the year 1800, a great number of the inhabitants of Perth and the neighbourhood, dissatisfied (as it seemed) with the manner in which they were supplied with bread by the bakers of that town, formed a society for supplying themselves with this commodity. Their articles of agreement were the following.

1st August, 1800.

Art. 1. This association to be called the Perth Wheaten Bread society, for the benefit of the Subscribers.

Art. 2. The number of Subscribers not to be less than one hundred, and no smaller subscriptions than one guinea; and for each half-guinea subscribed, to have one quartern loaf weekly delivered at their houses, if within the town and near its vicinity; the money so subscribed to remain as a fund for the purchasing of grain or flour for the benefit of the society.

Art. 3. Any member disposing of his bread, or any part of it, at an advanced price, so soon as the same can be proved, shall forfeit his right and claim to the society.

Art. 4. The business of the society to be under the management of twenty of their own members as a committee to be chosen annually, preses and clerk included in that number, who are to be chosen by the committee.

No. 22.

A society formed by a very large number of the inhabitants of a royal burgh, for the purpose of establishing a bakehouse out of the burgh, and supplying themselves and their own families with bread, is not contrary to the privileges of the corporation of bakers in that burgh.