

Dunbar reclaimed to the Court; who, on advising his petition with answers, adhered to the Lord Ordinary's judgment; and a second reclaiming petition for him was refused without answers.

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Lord Ordinary, *Monboddo.* For Dunbar, *Henry Erskine.* Alt. *Elphinston.*
S. Fol. Dic. v. 4. p. 200. Fac. Col. No 101. p. 160.

1783. *March 3.* Sir WILLIAM FORBES, and Others, *against* JOHN RONALDSON.

ON the west side of the entry from the High street to Gray's close there is a piazza supported by pillars, bounded on the south and west by a shop and cellar belonging to Mr Ronaldson, and on the north by the plain-stone pavement.

Mr Ronaldson intending to advance his shop to the pavement, by taking into it the area occupied by the piazza, obtained for this purpose consent of some of the inhabitants of Gray's close, and a warrant from the Dean of Guild of the burgh.

Of this procedure, as prejudicial to the public, by narrowing the entry to the close, and depriving passengers of the shelter afforded by the piazza, Sir William Forbes and others complained by bill of suspension.

Pleaded in defence; As the rights under which the defender possesses his shop and cellar are limited by 'the entry to Gray's close on the east,' and 'the public street on the north,' the area within the piazza, which, with no propriety, can fall under either of these descriptions, must be held as his property, by occupying which occasionally with articles of merchandise, he has derived every benefit of which, in its present condition, this spot of ground is capable. Nor can the transitory accommodation of ten or a dozen of passengers, when productive of no sort of inconveniency to the defender, be presumed to have introduced a servitude of this anomalous nature, and to have disabled him from converting his property to a more beneficial purpose.

Could this space be considered as a part of the public street, it ought not to be permitted to a few individuals, from motives of caprice, to oppose an alteration which, without any sensible inconvenience to the public, is greatly conducive to the beauty of the street, and which, on this account, has received the approbation of the neighbours, and of that officer within the burgh whose peculiar province it is to superintend matters of this sort. Hence, though by far the greatest part of the high street of this city seems in ancient times to have been bounded by piazzas, scarcely a vestige of these remains; the conterminous heritors, when rebuilding their houses, having been allowed without challenge to follow the measures adopted by the defender.

Answered; From the history of this city it appears, that in the beginning of the 16th century the Magistrates, in order to promote the sale of the wood belonging to the community, permitted the purchasers to advance the front of

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Found that the piazzas on the sides of the High street of Edinburgh, could not be built up by the proprietors of the shops under them, the same being the property of the public, and that every inhabitant of the burgh has a right to put a stop to such encroachments attempted by individuals.

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their houses seven feet into the street, upon their leaving these new fronts supported with pillars for the conveniency of passengers; Maitland's History of Edinburgh. The space, therefore, occupied by these piazzas is the property of the public.—At any rate, it has for ages been used as part of the public street, on which no private party, upon pretence of improvement, can be allowed to encroach. Nor can former precedents, occurring through the connivance or neglect of the Magistrates, and now sanctified by long possession, afford an excuse for new alterations. Although the Magistrates consented, every inhabitant of the burgh has a right to put a stop to them.

THE LORD ORDINARY “having visited the ground, repelled the reasons of suspension;” but the Court considering the alteration to be an encroachment on the public street, altered that interlocutor, and

“Suspended the letters.”

Lord Ordinary, *Kennet*. Act. *Nairne, Tytler*. Alt. *Maclaurin*. Clerk, *Home*.
C. *Fol. Dic. v. 4. p. 198. Fac. Col. No 105. p. 167.*

1788. July 19. DAVID GREGORY against DAVID and MARGARET BURT.

No 28.

A party building in virtue of a judge and warrant, must restore the subjects as soon as the sums disbursed by him have been recovered out of the rents.

THE predecessors of David and Margaret Burt having, under the authority of the Dean of Guild, rebuilt a house in the town of Perth, which belonged to David Gregory, he brought an action for recovering possession; alleging, that the money laid out in building had been fully repaid out of the rents.

Pleaded in defence; The law authorising the rebuilding of ruinous houses within burgh, was intended as a punishment on negligent proprietors, and at the same time to encourage other persons to employ their money in this way, *ne urbes ruinis deformentur*. When, therefore, it is declared, as has been done in the present case, by the sentence of the Dean of Guild, that the builders shall retain possession ‘until the full sums laid out by them are paid,’ it is obviously meant that the rents shall belong to them, till the owner appears and makes payment of what has been laid out. Without this, no one would be so imprudent as to employ his funds in this manner, as he could not in any event receive more than he had actually disbursed, and at the same time might lose every thing, if by any accident the buildings were destroyed.

Answered; If it had been intended to encourage mere money-lenders to employ their wealth in the reparation of ruinous houses within burgh, the defender's argument would undoubtedly be of some weight. But the framers of this regulation had nothing more in view, than to give to tradespeople an opportunity of getting employment for themselves; knowing that this would be a sufficient inducement to them. The words uniformly used in the proceedings before the Dean of Guild, obliging the builders to make restitution as soon as