

decerned against him; but the Court of Session remitted to an accountant to report on the question, how many crops' rent had actually been paid for the orchard and fruit thereof. It appeared from the report, that Forrester had not got the fruit of the orchard crop 1797; and thus, counting crop 1816, only had the number of crops (nineteen) stipulated for by the lease. Evidence was also produced, that a person authorized by Mr Thomson had been paid by Forrester for the crop of 1816. The Court therefore altered, and assoilzied Forrester, with expenses. Thomson appealed; but the House of Lords, without requiring the respondent's Counsel to be heard, affirmed the interlocutor, with L. 50 costs.

JAMES CHALMER—SPOTTISWOODE and ROBERTSON,—Solicitors.

WALTER NEWALL and JOHN INMAN, Appellants.
Lushington.

No. 23.

COMMISSIONERS OF POLICE OF DUMFRIES, Respondents.
Spankie—Alderson.

Public Police—Statute.—Held, (reversing the judgment of the Court of Session), that a clause in the Police Act of Dumfries, authorizing the Commissioners to remove obstructions, did not warrant them, for the purpose of widening the entrance to a street, to remove a tenement which did not encroach on or obstruct the line of the other houses.

BANK-STREET in the town of Dumfries runs off at right angles from the High-street, and leads to the White-sands, where cattle and other markets are held. At the corner which it forms with the High-street, Newall and Inman had an area on which stood a tenement of houses facing both the High-street and Bank-street. Adjoining to this tenement was a small area or garden, enclosed by a stone wall built in a line with the wall of the tenement, and running along Bank-street. At the opening next the High-street, Bank-street is only fifteen feet wide, but gradually widens as it approaches the cattle-market, where it is above forty feet wide. Newall and Inman's area and tenement did not project into or form any encroachment or irregularity on the street itself; but much inconvenience was occasioned by the narrowness of the entry from the High-street into Bank-street, it being frequently crowded to excess.

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2D DIVISION.
Lord Cringletie.

By the Dumfries Police Statute, Commissioners are empowered to order 'the proprietors of all houses and other buildings 'fronting any of the streets or roads of the said town, encroach-

June 21, 1830. ‘ing upon or obstructing the lines of the said streets or roads, ‘to remove, or cause to be removed and taken away, within a ‘reasonable time, such houses or parts of houses, and all outstairs, ‘outshots, buildings, erections, and other things whatsoever, which ‘tend to obstruct the free passage of the said streets, roads, ‘and foot pavements.’ And it is provided, that in case the ‘foresaid obstructions shall not be removed by the owners or ‘proprietors within three months after the date of the warrant ‘ordering them to be removed, it shall be lawful for, and in ‘the power of the said Commissioners, to cause the same to be ‘instantly removed at the expense of the owner; provided also, ‘that in cases where the said houses or parts of houses, outstairs ‘or outshots, buildings and erections, shall be removed under the ‘authority of this Act, for the purpose of public conveniency and ‘accommodation, that the expense and damage arising therefrom ‘shall be paid by the Commissioners aforesaid from the funds ‘levied by virtue of this Act.’ Provisions are then made for ap-
 plication to the Sheriff, and obtaining a verdict of a jury as to the value of the ground and houses; and the Sheriff is authoriz-
 ed, after consignation, or payment, of the money awarded by the jury, to ‘ordain the owner or proprietor of such houses or parts ‘of houses or areas, on which such encroachments stand, quietly ‘to permit and suffer the said Commissioners, or workmen to be ‘employed by them, to take down the said houses or parts of houses, ‘and encroachments or nuisances, and to convert the same into a ‘part of the public streets, for the purpose of sufficiently widen-
 ‘ing or straightening the same.’

The Commissioners of Police entered into a contract with Newall and Inman, whereby the latter agreed to take down their tenement, and, in rebuilding, to give to the side facing Bank-street six feet nine inches; the value of the ground so given to be fixed by a jury in terms of the Police Act. Newall and Inman accordingly removed the tenement, lined back to the stated extent, began to rebuild, and presented an application to the Sheriff, praying him to summon a jury to fix the value of the ground ceded to the Commissioners. In the mean time, the Commissioners adopted a different view, and demanded additional fifteen inches from Newall and Inman; thus making the space to be ceded, eight feet. This was refused; and the Commissioners presented a petition to the Sheriff, founding on the statute, and praying for an order to summon a jury to value the ground which they proposed to take off the property of Newall and Inman, in order to widen the street. This was opposed on

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various grounds by Newall and Inman; but it is unnecessary to detail the procedure, except that it was agreed, in the original application, that Newall and Inman should resume their property, as if the original building had never been taken down, reserving all claims of damages. Thereafter the Sheriff, in respect that he 'has no power to review or controul the proceedings of the pursuers as Commissioners under the statute libelled, and that his only duty in this case is, in obedience to said statute, to follow out the measures thereby prescribed for ensuring to the defenders the value of the property proposed to be taken from them,' granted warrant to summon a jury. Newall and Inman having obtained leave from the Sheriff, presented a bill of advocation, and in the meanwhile proceeded at their own risk to build a tenement within the original march. Lord Mackenzie refused the bill as incompetent, in respect that 'it appears to the Lord Ordinary, that the question cannot be tried in an advocation of an application to the Sheriff for a jury trial under the statute, but by a direct suspension in this Court, on the ground of alleged excess of power.' Lord Alloway, however, passed a second bill, and issued the subjoined note of his opinion.* A record having been closed, Lord Cringletie remitted 'to the Sheriff to recall his interlocutor; and in respect that the Commissioners of Police have no power to take any part of the area in question, to dismiss the petition of the said Commissioners; and found them liable in expenses.' His Lordship explained his opinion in the note below.† The Commissioners having reclaimed,

* 'NOTE.—The question stirred is, whether the Commissioners of Police under the statute have the power of widening the streets? It is surely doubtful whether they possess this power *ad libitum*, and whether the powers committed to them to remove all houses and other buildings fronting any of the streets or roads of the town, and all outstairs, outshots, buildings, erections, and other things whatsoever, can be construed into a power not only to remove such encroachments from the streets, but to widen the streets where there are no such obstructions, from the line in which they now are, to the line which they conceived to be more fitting and advantageous. The question, therefore, goes to the power of the Commissioners; and if they had no such powers, the application to the Sheriff was incompetent; and any advocation of the judgment of the Sheriff, especially where leave to advocate was granted, was competent, and even more regular than a suspension, where the decree had not been extracted.'

† 'The Lord Ordinary having heard parties at the bar very fully this day, and since advised the process, sees that he remarked, on advising the revised condescence for the Commissioners of Police, that they did not dispute the accuracy of the plan in process, whereby their attention to that point was directed before closing the record; and it was closed without the accuracy of it being contradicted. *2dly*, In the condescence as revised, it is not pretended that the house in question is an encroachment *on the line of the street*. The Commissioners only say that it is an encroachment on Bank-street; and as that street appears to be composed of two lines of

June 21. 1830. the Court altered, advocated the cause, and found ‘ that the proceedings adopted by the Commissioners, for the purpose of re-

‘ houses converging together as they form the street, every one of them is as much an encroachment as another. The plan represents the street as it stood before the house belonging to the advocators was pulled down; and as a private bargain between them and the Commissioners, for giving up six feet nine inches of the area on which it stood, and on the faith of which bargain the house was pulled down, was departed from by the Commissioners, the case is to be viewed in the precise same way as if the old house were still standing. On this view, then, the fact is proved by the plan and uncontradicted averments of parties, that Bank-street leads off at right angles from the High-street of Dumfries; that, at the mouth next the High-street, it is only fifteen feet wide; that the tenement in question stands on the right or west side of Bank-street, and immediately adjoining to it is a small area or garden, enclosed with a stone-wall built in a line with the wall* of the house next the street; next to that is a house, whose wall next the street is in continuation of the same line, and so on to the south,—so that there is no deviation from, nor encroachment on the line of that west side of the street:—on the east, or opposite side, the line is not so straight; but still it is nearly so, and the two diverge gradually as they are carried south, so as to widen or be distant from each other, twenty-seven feet seven inches. Thus the two sides of the street form the two sides of a frustum, or part of a very acute angled triangle, of which the west side is the more regular of the two, and is, besides, a continuation of the line of another street leading farther south.

‘ Such being the facts, the Lord Ordinary considers this to be entirely a question—What is the power of the Commissioners to pull down houses? for he doubts not the propriety of widening Bank-street at its junction with the High-street. That may be quite expedient; but if they have not the power, the street must remain as it is; and the Commissioners have themselves to blame, that they did not widen it to the extent of six feet nine inches, which the advocators consented to give them.

‘ Now, on looking to the Act of Parliament, which is the sole right of the Commissioners, the powers given them are expressed thus:—That it shall be in the power of the Commissioners, after “ inspecting the premises, and hearing the parties concerned, to order the proprietors of all houses and other buildings fronting any of the streets or roads of the said town, encroaching upon, or obstructing the lines of the said streets or roads, to remove, or cause to be removed or taken away, within a reasonable time, such houses, or parts of houses, and all outstairs, outshots, buildings, erections, and other things whatsoever, which tend to obstruct the free passage of the said streets, roads, and foot-pavements,” &c. This is the extent of the power given; and in an after-clause it is declared, that after paying for the said houses, or parts of houses, or other obstructions, the Commissioners are “ to convert the same into a part of the public streets, for the purpose of sufficiently widening or straightening the same.” From the powers thus given, it seems quite clear to the Lord Ordinary, that it was only houses, or parts of houses, encroaching upon or obstructing the lines of the streets, that were to be pulled down; for surely there is no power given to alter these lines. Put the case, that a street shall be a perfect parallelogram, but that the houses are within eight feet of each other, like an Edinburgh close; can it be maintained, that under the statute one side of the street could be pulled down, and the street be widened to twenty or thirty feet? Such an idea was never in contemplation. It was obstructions only, or encroachments on the lines, that were intended to be removed. The line of a street may be circular, or it may be a parallelogram, or con-

* ‘ This is stated in the answers to the condescendence, and not disputed in the revised condescendence, and must be held to be true.’

‘ moving the obstructions in that part of Bank-street that enters into the High-street of Dumfries, complained of, were competent under the statute, and remitted to the Sheriff to proceed accordingly; but found no expenses due.’* June 21. 1830.

Newall and Inman appealed.

Appellants.—1. The Commissioners must abide by the arrangement which they entered into with the appellants, or at all events are bound by the agreement, that matters are to be put in statu quo.

2. The statute vests the Commissioners with no power to widen streets by removing houses in the lines of these streets, whether the streets be narrow or not.

Respondents.—1. The arrangement between the parties left all matters entire, and cannot affect the present question, which relates to the interpretation of a statute. If the Commissioners had the power, they were bound, in the execution of the trust confided in them, to enforce the statute.

2. In regard to the construction of the statute the object of the Legislature is clear, and its provisions must be interpreted so as to give effect to that object. The purpose of it was to improve the communication between one part of the town and the other, and it is not denied that the tenement forms an obstruction to the intercourse in one of the most crowded quarters of the town.

The LORD CHANCELLOR, after observing that he concurred entirely in the opinion of the Lord Ordinary, moved, and the House of Lords ‘ ordered and adjudged, that the interlocutor, so far as complained of, be reversed.’

Appellants' Authorities.—Russell, January 18. 1764, (7353.) Countess of Loudon, May 28. 1793, (7398.) Dawson, February 18. 1809, (F. C.) Heritors of Corstorphine, March 10. 1812, (F. C.) Young, June 28. 1814, (F. C.) Brown, Feb. 1. 1825; (3. S. & D. 480.)

RICHARDSON and CONNELL—A. GORDON,—Solicitors.

‘ verging; but still, if the line be straight, and not obstructed by salient buildings or encroachments on that line, the Commissioners have no power to touch it: and as the house in question was not an encroachment on the line of Bank-street, but formed a continuation of that line, the Lord Ordinary is of opinion, that they have no right to encroach on its area without the consent of the advocators. When a street is formed by two converging lines, it is impossible to say that any one of the houses is an encroachment; they all tend to narrow it as they are continued, but none is an encroachment on the line. If there be a right to pull down, it must extend to the whole street.’

* See 6. Shaw and Dunlop, 884.