

1701. December 12. VISCOUNT of OXFORD *against* JOHN WATSON.

THE deceased Master of Oxford, being in the fee of his father's estate, sells some old trees, growing in the park of Cranston, to John Watson, a wright; and he pays the price by advance. The Viscount stops him in the cutting and carrying away, and intimates to him an express obligation granted to him by the Master, his son, not to dispose thereon, in regard the parks were a part of his father's reserved liferent; notwithstanding whereof, Watson, in the night-time, brings carts, and carries away a part, and nicks the rest. The Viscount pursues him before the Sheriff, as a cutter of green wood, upon the several Acts of Parliament, decerning £20 Scots for every tree; and thereupon obtains a decreet for upwards of £3000 Scots; and having charged thereon, Watson suspends on thir reasons:—That he was overtaken on penal statutes, which could never comprehend his case, who had, *bona fide*, contracted with the fiar and proprietor of the trees, and paid him the price, which was more than a probable cause to excuse *a dolo et culpa; emptio venditio* being *contractus uberrimæ fidei*. 2do. The Viscount represents the Master his son on the passive titles, and so must warrant his deeds.

ANSWERED,---The destroying of planting and growing trees is so odious in our law that it is criminal; and, after interpellation, he was *in pessimo dolo* to carry them away in the night-time, and maliciously to nick the rest. As to the *second*, The passive titles were denied.

The Lords found, As to what he had cutted and carried away, before intimation made to him of the Viscount's right, Watson was not liable; but *quoad* these he cutted after he was interpellated, however his contract with the Master was a *titulus coloratus*, yet he must be liable in the penalty inflicted by law; but so as that the Viscount had no further interest in the said fine, but only the annualrent thereof during his lifetime, he being only liferenter of the park and trees; but the *sors* and stock belonging to the Master, as fiar, it now accresced to Watson, as having right from him thereto by disposition; and found the same as to all the trees nicked, which had gone back, and did grow no more: And, though in a suspension, yet allowed either party to prove the allegiances, being *in facto*; as also admitted the passive titles to probation. How far liferenters, or *usufructuarii*, have right to a part of the woods growing on the liferented lands, if farther than for reparation of the houses, see Craig, *Feudor. p.* 189, in the case between *Mary Ballanden* and *Ramsay of Dalhousie*.

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1701. December 16. JOHN H. ADVOCATE *against* ERSKINE of PITTODRIE.

MR John H. Advocate gave in a bill, complaining, that, in a depending process between Erskine of Pittodrie and his mother, about her jointure, there being a commission directed to take Pittodrie's oath upon some points, he, as employed by the lady, did attend the executing of the said commission; wherein Pittodrie carried himself with that rudeness to the complainer, that he not only reviled him but threatened to affront him with his staff; and, seeing the mem-