

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 decret 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-

bers of the house were under the protection of the Lords, in going about the exercise of their employment, he craved redress.

The Lords considering that injuries and indignities, done to any of the College of Justice in their employments, used to be summarily cognosced and vindicated, without a formal process, they ordained him to be cited to answer to the bill; but the question arose upon how many days, six being usual in such cases: But, in regard he lived in Aberdeenshire, they appointed the citation to proceed on fifteen days, as a more competent time to answer.

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1701. *December 19.* MARGARET BOSWAL, and HAMILTON of GRANGE, *against* BOSWAL, her Father.

MARGARET Boswal, and Hamilton of Grange her husband, against Cornet George Boswal her father. The said George Boswal marries Margaret Bruce for his first wife, and by her has only one daughter, called likewise Margaret, who, by the decease of her mother's father, falls in to be apparent heir to some houses and acres about Kinghorn, and sundry sums of money, extending to upwards of 12,000 or 13,000 merks, as they were commonly valued; but Robert Bruce, her uncle, claiming the same by a disposition, Cornet Boswal raised reduction thereof, and, after a tedious and expensive plea, prevailed, and at last it ended in a transaction. In 1698, William Hamilton of Grange came in suit of the said Margaret Boswal, daughter of the said Cornet, and, after communing, he agreed to accept of 6000 merks of tocher, whereof 4000 in hand, and 2000 after the Cornet's decease, and to abide his liferent; and, of the date of the contract of marriage, there is a bond, subscribed by Grange and his future spouse, obliging them, for the tocher foresaid, to dispone all the estate befallen her from her grandfather, to the Cornet, and to discharge him of his tutory-accounts; and to grant an ample disposition thereupon, after the celebration of the marriage. About a month after the marriage being consummated, there is, the next morning, a disposition subscribed by the said two new-married persons, conveying all she had succeeded to, by her maternal line, in favour of her father. And, some time after that, Grange gives a discharge of the 4000 merks of tocher; but afterwards, thinking that he and his wife had renounced an opulent estate, and gotten nothing but a small part of that which was undoubtedly her own, and which her father could not withhold from her, he raises a reduction of the contract of marriage, and all the deeds and transactions depending thereon; and insisted on his wife's minority and lesion, on *metus reverentialis*, force, concussion, and fear; and that the deeds were in favour of her curator and administrator of law, without consent of a quorum of the rest of her curators.

The Lords, before answer, allowed a conjunct probation to either party, what was communed or treated betwixt the parties before the marriage, and if any threats or concussion was used; and what was the true value of the estate in controversy, which devolved to her by her grandfather, and how far it exceeded the tocher, and what expenses were bestowed on the process for defending or recovering it.