

if he paid the price, there was no confidence. On the other point, the conveyance proves the true cause, and the pursuer must make out want of value.

The third issue is out of the question, as if he was any thing, he was debtor, not creditor, and I think you must find on this for the defender.

If, on the whole, you think this was a trick, then you may find for the pursuer ; but if you come to the opposite conclusion, then for the defenders.

Verdict—In the reduction for the pursuer on the first and second issues, and for the defender on the third. In the action of damages for the defenders.

Jeffrey and More for the Pursuer.

Hope, Solicitor-General, and Buchan for Hossack.

(Agents, *John Young and Andrew Smith.*)

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PRESENT,

LORDS GILLIES, CRINGLETIE, AND MACKENZIE.
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SCOTT v. TAIT AND RUSSELL.

DAMAGES by a tenant against a landlord and the trustee on his estate, for damage done by a

SCOTT
v.
TAIT AND
RUSSELL.
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1826.  
Mar. 24.  
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Damages to a tenant for injury done to his farm by the overflowing of a river.

SCOTT
v.
TAIT AND
RUSSELL.

river which had not been properly fenced off.

DEFENCE.—Various defences were stated, but the question was reduced to the following issue.

ISSUE.

“ It being admitted that the defender, Crawford Tait, let in lease to the pursuer the farm of Lower Sheardale, for the period of nineteen years from and after the term of Martinmas 1820.

“ It being also admitted that the said defender became bound to enclose, during the spring or summer 1820, with a sufficient sea-dike, the whole of the said farm upon the north and upon the east sides, so as to prevent it being overflowed by the river Devon, and to put in tooks, and otherwise to defend the banks of the river, and to make the sea-dike, all at his own expence.

“ Whether the said Crawford Tait, in violation of the said obligation, failed to defend the bank of the said river, by making a sufficient sea-dike upon the said farm ; and whether, in consequence of the said failure on the part of the said defender, the said river did,

“ on or about *the 7th and 8th days of March*
 “ 1825, overflow part of the said farm, to the
 “ loss and damage of the pursuer ?”

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M'Neill opened the case, and stated the facts.

Cockburn, for the defenders, said the damage done was greatly exaggerated, and the pursuer gained by losing his farm. This was a flood beyond what had happened during the memory of man, and against which the defender was not bound to provide. The pursuer prevented the repair of the dike. He left his farm without the authority of a court of law.

Jeffrey denied that the flood was extraordinary, and said that no evidence could satisfy the jury that the pursuer contributed to the damage. In addition to the actual damage to the crop, we have proved the farm L.56 a-year worse. As the floods were frequent, the pursuer was entitled to quit his farm, the defender having broken the bargain.

LORD GILLIES.—In this case the agreement was, that the defender should defend the farm from the river by a sufficient dike; and the first question is, Whether he has implemented this agreement? The fact of his having, on

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two former occasions, paid damages, makes it probable the dike was insufficient ; and the witnesses for the pursuer confirm this.

It is also proved that the river overflowed ; but the material question is, What loss did the flood necessarily produce to him ? It is said he courted the loss ; but this cannot be supported by proof of a rash expression. It is also said he injured the dike by pasturing on it, and prevented the defender from repairing it ; but this has not been made out in evidence.

The main question is, Whether his removal was caused by the flood ? And here it is not proved that he in any way formally intimated to the defender, that, unless the dike was put in repair, he must quit the farm ; but he takes the law into his own hand, and voluntarily quits it. Had the farm been ruined, or so injured that it would produce nothing, this conduct might be justifiable ; but the farm produces a good crop, and he ought to have remained unless there was some adequate cause for his removal.

The rest of the damage consists of particular articles. In so far as the defenders reaped the crop belonging to the pursuer, this is not properly an action for damages, but to restore what he has gained at the loss of the other. For the

injury done to his wife's health, I do not think he is entitled to any thing, as he came there knowing the situation. Supposing the injury to the farm rendered it not tenantable, still his loss was not great, as it is proved that he did not manage well.

SCOTT
v.
GRAY.

Verdict—For the pursuer. Damages L.235,
5s. 9d.

Jeffrey and A. M'Neill, for the Pursuer.

Cockburn and Tait, for the Defenders.

(Agents, *Campbell and Burnside*, w. s., *Taits and Young*, w. s.)

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PRESENT,

LORDS GILLIES, CRINGLETIE, AND MACKENZIE.

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SCOTT v. GRAY.

1826,
March 25.

REDUCTION of two deeds on the ground of imbecility, facility, and incapacity in the maker, or at least facility and circumvention.

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Finding for the defender on a question of incapacity, facility, and circumvention.

ISSUE.

Whether the deeds were not, or either of them was not, the deeds or deed of the deceased John Scott, merchant in Montrose.