

lands, they must either be completed by infeftment, or, if they cannot bear that expense, then lawyers devised the doing of it by way of mutual tack, for some hundreds of years ; which is equivalent.

The Lords found, This contract, never being perfected by infeftment, did not oblige the singular successor, nor transmit the property. But it being informed that the march-stones were removed, the Lords thought such a delinquency as deserved to be inquired into ;—a curse, by the divine law, being pronounced against the remover of land-marks ; and, by the twelve tables, *qui terminos ex-arassit diis sacer esto* ; and, by the title *de Termino moto*, it is punished arbitrarily. Anent Molestation of Marches, see Act 42, 1587. *Vol. II. Page 40.*

1699. *February 10.* HELEN FERGUSON *against* DURHAM of LUFNES.

HELEN Ferguson pursues Durham of Lufnes for spuilie and ejection, by seizing on her goods and corns, and thrusting herself and family out of the houses. ALLEGED,—George Hogg, her husband, having been his tenant, and dying much in his debt, the said Helen, his relict, gave bond for £2200 as the arrears, and a full disposition to her goods and gear for his better security, authorising him to enter into possession without hazard of spuilie ; *et quævis causa excusat a delicto*. ANSWERED,—The disposition can never defend, for *nemo debet sibi jus dicere, ne majoris tumultus occasio detur* ; but his entry should have been *authore prætoræ*, by a warrant from the Sheriff. 2do. The disposition relates to an inventory, and yet he meddled *per universitatem* with the whole. 3tio. He intromitted before the term of payment of the bond ; which was most unwarrantable. REPLIED,—He needed no other warrant than what was contained in the disposition, her possession being merely precarious, and which he might recal at any time. To the *second*, The mentioning an inventory was not restrictive, but demonstrative of his right to all *per aversionem*, aye and while he was paid. And, as to the *third*, He behoved to secure her goods ; because he offers to prove she was absconding herself and embezzling her goods, conveying them privately away under night ; and therefore he employed people to cut down the corns, and required her, by way of instrument, to come and oversee the same, and to name some honest neighbours to appreciate them.

The Lords thought Lufnes had been too precipitant in meddling, before the term of payment, without applying to a judge, or at least holding a baron-court, and leading probation anent her embezzlements, whereon he might have arrested her goods and corns : and remembered, that, in *Bruce of Bordie's pursuit against Keirie of Gogar*, the Lords found a disposition to the crop and goods purged a spuilie ; yet the intromission was so far found unwarrantable that they modified the corns at the highest prices : Therefore, in this case, the Lords allowed a mutual probation as to her withdrawing herself and abstracting her goods, and as to what the roum would sow, and what was the extent of the product, and if he used any pouding, before they would determine whether she should have her oath *in litem*, or if he shall be only countable for his super-intromission above his own payment.

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