her Lord being charged thereon, in the discussing of a suspension, they are decerned to renounce all benefit of the foresaid disposition, and to accept of the £10,000 sterling in full satisfaction of all. And, accordingly, my Lord and Lady Yester grant a full and ample renunciation in these terms, of the estate of Lauderdale and Swinton, and of all other rights that might pertain to the Duke, and that in favours of the said Duke, her father, and his heirs-male. The present Earl of Lauderdale, as heir to the Duke, his uncle, raises a process against the Lord Yester, as representing his mother, and as lawfully charged to enter heir to her, to denude of the said apprising, in so far as concerned the estate of Dunfermline, thereby apprised in his favours, as heir-male, in implement and prosecution of my Lady his mother's renunciation of all right whatsomever she either had by the disposition or as heir of line to her father.

ALLEGED for the Lord Yester,—That he is not bound to denude, because his mother renounced no more than what was disponed to her; and the last can be no broader than the disposition, its foundation. But *ita est*, the Duke disponed no more in 1665 but what was then in his person; which can never comprehend this comprising of Dunfermline, which the Duke had not then acquired, but only transacted it in the 1668, three years after, and took the conveyance to himself and his heirs whatsomever; and she being his heir of line, and not having renounced it, the same devolves to my Lord Yester, her son, and he is not bound to denude of it.

ANSWERED,—That the Duke's disposition to his daughter was an universal settlement of his whole succession; and though he altered his resolution afterwards, and took it from her by a redemption, and gave her a tocher in lieu of it, yet the renunciation must be interpreted and constructed as universal and large as the settlement; and these words, "all rights which may pertain," is as much as if he had said, "all that shall pertain to me at the time of my decease." And her accepting the tocher in satisfaction clears that she was to retain nothing. Likeas, this apprising was potentially in the Duke's person the time of his disposition to his daughter; for he had then the right of reversion, and the *jus relevi*, or his right of relief against Dunfermline, though he had not the right actually settled in his person till the 1668; yet that is many years before her renunciation, and so must comprehend the same.

The Lords found her renunciation extended to this right; and therefore my Lord Yester behoved to denude of it, in favours of my Lord Lauderdale, as the Duke's heir-male.

But this does not terminate the plea; for the Lords Tweeddale and Yester have rights upon the estate of Dunfermline, which they judge preferable to this comprising, on which they intend to compete and exclude my Lord Lauderdale from reaping any benefit thereby. *Vol. II. Page* 517.

[See the posterior part of this Case, Dictionary, page 12062.]

1709. *July* 22. ARCHIBALD KINCAID of HOOK *against* OSWALD.

KINCAID and Oswald. Archibald Kincaid of Hook resolving to set a tack of part of his lands; that he might know its extent, he causes one Oswald, a sworn

metster, measure it, who reported it to be 46 acres, 2 roods, and 13 falls; on the faith of which he sets it to one Lorn, a tenant; but afterwards, having some jealousy, he employs other two to remeasure it; who declare it to be 51 acres. And Oswald himself being allowed to make a second trial, he acknowledged it was 48 acres, though the sea had washen away some of the ground that was at first measured. Hook thinking himself prejudged by Oswald's false report, he raises a summons against him for damages, libelling that he set these lands for two bolls the acre; and he having measured the ground five acres short, he, by his gross ignorance, fraud, omission, or fault, had lost ten bolls every year of the nineteen of the tack, amounting to 2000 merks of damages, which he is bound to refund and make up, by the title of the Roman law,—*si mensor falsum modum dixerit.*

ALLEGED,—*Esto* there were an error and mistake in the mensuration, it can never make the defender liable, unless dole and fraud were libelled and proven, that he did it to get a cheaper bargain to the tenant, who was to take it by aiker-dale, and only to pay according to the number of the acres: For *l.* 1, *sect.* 1, of that same title says,—*Si agri mensor imperite et negligenter versatus est, sibi imputare debet qui talem adhibuit.* Neither is there any error; for, in the first report, he forbade him to measure the ends of riggs lying towards the sea, but only the arable ground; whereas, in the following mensurations, all is taken in: which makes the difference and the number of acres to swell beyond the former account. And no man could serve in any employment whatsoever, if, for every error and mistake, without fraud or guile, they should be liable in pretended damages.

ANSWERED,—That the defender being a professed metster, and taking money and hire for his work, he must be liable; seeing *imperitia in artifice*, professing skill of his trade, *culpæ annumeratur*, *L.* 132, *de Reg. Jur.* And the laws in the same title determine that he is liable *ob culpam, quia scit prætor eos ob mercedem intervenire.* And it is false that more land is contained in the second report than the first; for even the ditches, grass, and lee ground was included in measuring, both first and last. And he offers to subject it yet to a new trial, and it will be found to be no less than 50 acres, deducing what the sea has covered; so his damage is evident, solely occasioned by the said Oswald the metster's fault.

The Lords finding that the first report was not in the process, but some way amissing, which was the whole foundation of the process, they superseded to give answer, though Kincaid offered to supply it by his oath.

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1709. *July* 26. The EARL of SEAFIELD *against* SIR PATRICK OGILVY of BOYNE.

THE Earl of Seafield, as a real creditor of Sir Patrick Ogilvy of Boyne, pursues a roup and sale of his estate on the statute of bankrupt; in which he led a probation: And it being this day advised, the Lords found the rental and deductions from it proven, and, by the debts and incumbrances produced, he was