

ANSWERED,—I made a most lucrative and profitable bargain for you. There were two marriages due, which far exceeded the sum paid; and I got you both a *novodamus* and a change of the holding; all which you have ratified by several reiterated deeds since your majority; and all know Waterton to be both *sciens et prudens*, and after so long an interval cannot now draw such solemn transactions in question.

Waterton contended no transaction could validate or take off fraud and dole.

The Lords assoilyed from the reduction; and found he could have no repetition of the money paid. Against which interlocutor he protested for remeid of law.

*Vol. II. Page 643.*

1711. June 6. ANDREW MERRY *against* LOCKHART of LEE.

ANDREW Merry, chirurgion-apothecary in Edinburgh, having attended John Lockhart of Lee during a long course of sickness and swelling in his legs, and furnished a sear-cloth at his burial, pursues this Lockhart of Lee, his brother, on the passive titles, for payment of a great account; who objecting against some articles set down for his pains and attendance, it was ANSWERED,—That within burgh the payment of the drugs used to pass for all; but where the patient lived in the country, the waiting on him, to the loss of his other employment, was a plain damage, at least a *lucrum cessans*; which happened in this case, for he made a journey on his account to the Lee; and, after staying several days, left his apprentices *alternis vicibus* for some months, to attend him.

The Lords thought the payment of the drugs could not here compensate his pains; but that he might very well charge a separate article for his attendance and loss of time; which forced Lee to propone a total exception,—That, he being fiar of a tailyed estate under irritancies *de non contrahendo debitum*, he was not liable for this more than for any other debt; for this might be the ground of an adjudication to evict the estate, and so evacuate the design of the tailyie.

ANSWERED,—This was of a very different nature from other debts; it being *officium humanitatis et debitum naturale* to bury. And if this privileged debt were cut off, then the heirs of tailyie in Scotland (who were very numerous) behoved to lie above ground and rot; for who would funerate, that knew he was to get no reimbursement?

The Lords thought this point deserved farther deliberation, and therefore did not decide it at this time.

*Vol. II. Page 644.*

1711. June 16. THE MARQUIS of LOTHIAN *against* THE VASSALS of JEDBURGH PRIORY.

THE Marquis of Lothian, as Lord of the Erection of Jedburgh Priory, pursues a reduction and improbation against the vassals and feuars of that abbacy; and he craving a certification against them, because they refused to take a term