1790. *June* 16. EARL of BREADALBANE *against* THOMAS LIVINGSTON of PARK HALL.

GAME.

No person, however qualified by law, is entitled to hunt or kill game on the grounds of another without his consent, though open and uninclosed.

[*Fac. Coll. X.* 276; *Dict.* 4999.]

JUSTICE-CLERK. Property is sacred: no man can touch my ground without my leave; this point is clear in the civil law. Our statutes concerning hunting, &c. do not confer rights; they only introduce prohibitions with penalties. Penalties will not reach those who are not within the statutes; but that does not confer a right on any one.

HAILES. It has been found that no one can look for game, within the inclosures of another, or even follow game already started; and this point is happily at rest. Lord Breadalbane might exclude every right which Mr Livingston or any other in his situation could claim, by drawing an inclosure round his moors. What sort of an inclosure would be necessary? Surely not such a one as no sportsman could get over, but such a one as might imply an intention to prevent any person from touching the ground; and to appropriate it for the purpose of feeding sheep, or of planting trees and the like. Single stones placed here and there would sufficiently declare that ground to be kaimed. A turf of one foot high would serve that purpose, as well as a stone lime fence two yards high. By his interrupting Mr Livingston, and by his raising this declarator, he has expressed his intention to exclude, more explicitly than if he had reared such elusory fence. While the landholders of Scotland possessed large tracts of ground, which they knew not how to use, *there* much latitude used reciprocally in hunting and fowling; but this gave no right, constituted no servitude. I never could understand how I had a right to prevent an unarmed man from coming upon my ground, and yet had not a right to prevent a man with a fowling-piece. Lord Breadalbane has a right to have sheep on his ground, or to plant trees; strange that he should not have right to prevent his sheep from being disturbed, or his trees from being trodden down. [An argument, by Lord Hailes, was put in the newspapers, very erroneously drawn up.]

MONBODDO. There are no means of keeping man's body in order but by rural sports. Permission has been given by law for all persons to hunt hares, foxes, &c. and there is no law against it. The prohibitions, in particular cases, confirm the general rule. The Act 1621 restricts the privilege to one having a ploughland; but this did not mean to restrict him within his ploughland.

ESKGROVE. It is not said, by any law known to me, that, for the purpose of exercise or amusement, one may use another man's property: the Roman law is founded on principles of property and policy, and it reprobates any such idea. I have no notion that the Scottish legislature ever meant to make such

distinctions as have been lately made. None of the statutes point out what ground it is that is laid open for hunting. What sort of a right is that which is given over a kingdom, and of which the exercise may be prevented every where by the erecting of a fence?

PRESIDENT. If I am asked, Whether game be property, I shall answer No, unless possession be obtained. The question here is, Has a man right to use his own ground? Every man has, unless liable in a servitude. I have no right to fish in a stream, but, if the banks be mine, I may keep every one off the banks; the civil law is express. Hunting, by the feudal law, is derived from the king as an *exclusive* right. The quotation from our old laws is plainly erroneous. Our statutes and our lawyers agree against the right claimed by Mr Livingston.

GARDENSTON. No statute says, "that any man may hunt where he pleases." In this proposition all our best and most approved writers concur.

HENDERLAND. A right to hunt is a *modus acquirendi dominii*, but it does not give a direct property.

On the 16th June 1790, "The Lords decerned in the declarator, and granted interdict, and found expenses due, altering the interlocutor of Lord Monboddo.

Act. Ad. Rolland. *Alt.* A. Wight.

Diss. Monboddo.

N. B. While this cause was before Lord Monboddo, he heard it pleaded in great state. At nine o'clock he took the President's chair, and continued in it from day to day, till the Court met. Thus matters were protracted till the very last day of the summer session 1789, when he gave judgment, instead of taking the cause to report.

1790. *June* 23. JAMES BLAIR *against* JOHN SWORD and OTHERS, CREDITORS of PETER RATTRAY.

BILL OF EXCHANGE.

A bill bearing a stipulation for interest from the date, holograph of the acceptor, was sustained in a competition of creditors.

[*Faculty Collection*, *X.* 280; *Dictionary*, 1433.]

ESKGROVE. These bills are not probative by reason of the stipulation of interest. That stipulation changes the nature of bills; and as the solemnities of writing are absent,—necessary in writings which are not of the nature of bills,—the writings become not good. That the bill is holograph of the acceptor makes no difference in a question with creditors.

JUSTICE-CLERK. The bills do, in effect, stipulate interest. Here there is a