

them. *2do.* ALLEGED,—She was minor, and her curators were not called. ANSWERED, *1mo.* Wrong has no warrant; and, she being convened for a delinquency, there needed none to be called but herself. *2do.* She is nineteen years old, and has no other curator but her mother, and she is called. The Lords repelled this reason also, but not in respect of the *first* answer, which they thought not sufficiently relevant, but of the *second*; though the mother was convened as *socia* and not *qua* curatrix. *The third* reason was,—The ground whereon they were planted was her own, and *quilibet potest suo abuti*, at least it was a controverted march. ANSWERED,—Though the Justices of the Peace be not competent to property, yet, *per l. 2. D. de Jurisdic.* they may cognosce it in consequence of the riot; and accordingly it was fully proven to be the pursuer's ground; which the Lords sustained *hoc loco*. *The fourth* was,—That sixty of the ninety-two were but thorns, and designed only for a hedge; and so they fell not under the Act, appointing £20 for every growing tree destroyed; there being only £5 Scots of fine imposed on the breaking of hedges.

The Lords ordained trial to be taken, Whether the hawthorns were set by way of trees, at a distance, or only to make a hedge: And, in regard the Act 1685 has restricted the penalty to £10 for any trees within ten years old, they discerned for the other thirty-two trees at that rate, looking on that last Act as correctory of the former statutes. And though it was a very malicious act to destroy planting, *esto* it were on your own ground, for then *plantata solo cedunt*, yet they desired to be cleared, if they stood any time, and had taken root, or were challenged, *ex incontinenti*, after the planting, and broken down: and the Lords allowed the Reporter to pass to the ground and visit the same, and consider if it was designed for a hedge only, which the law esteems not to be trees, but only *arbusta*; or if it was destinate for large growing timber, to fence his house against the wind.

*Vol. I. Page 749.*

---

1696. December 31. The COUNTESS of DUMFERMLING against The CREDITORS of The EARL of DUMFERMLING.

ARBRUCHELL reported the Countess of Dumfermling against the Creditors. She had raised a summons for modifying to her an aliment, (in regard it had been refused to her by way of bill,) which she only craved during the dependence of the ranking. It was OBJECTED against it, *1mo.* That all the officers of state were not called, *viz.* the secretary, justice-clerk, &c. *2do.* That it could not have summary discussing, by virtue of the Act of Parliament in September last, 1696, because it was raised before the Act.

ANSWERED to the *first*,—The commissioners of the treasury, and donatars of the forfeiture, who had the greatest interest, were called. To the *second*,—It was seen and returned *communi forma*, which was enough, though the Act had no retrospect.

The Lords repelled the dilators, and allowed to call the rest of the officers of state, *cum processu*. But, on a review, they inclined to sustain the first dilator on the Act of Parliament.

*Vol. I. Page 749.*