

1763. August 9.

JAMES WATSON of Saughton, THOMAS CRAIG of Rickerton, JOHN CHRISTIE of Baberton, GEORGE INGLIS of Redhall, and JAMES CARMICHAEL of Hailes, against JAMES Earl of ERROL, and the other Noblemen and Gentlemen of the Edinburgh Hunt, and RICHARD VARY their servant.

IN May 1762, a petition and complaint was exhibited to the Sheriff of Edinburgh by the pursuers, with concurrence of the fiscal, against Richard Vary huntsman of the Edinburgh pack of hounds, for breaking down and leaping over their hedges and ditches, and riding through sown corn, and for hunting a pack of hounds, which he was not entitled to do; and therefore praying, that he might be discharged to hunt in time coming; that he might be found liable in damages to the complainers; and that he might be fined in the sum of L. 50 Sterling for contempt of the law, &c.

A proof having been taken, the Sheriff found it proven, ' That the defender ' Richard Vary has hunted with a pack of hounds on the grounds belonging to ' the complainers James Watson and James Carmichael of Hailes, after the ' wheat thereon was brierded, and that he once brushed through the hedge of ' an inclosure belonging to the said Mr Carmichael; Found, that the said de- ' fender had no right to hunt with the said pack of hounds on the grounds be- ' longing to any of the complainers; and therefore prohibited and discharged ' him from hunting thereon in time coming, with certification. And found the ' defender liable to the said Mr Watson and Mr Carmichael in damages and ' expenses, and modified the same to L. 2 Sterling; as also, fined and amer- ' ciated the said defender in L. 5 Sterling, payable to the procurator fiscal of ' Court; and granted warrant to any of the officers of court to apprehend and ' incarcerate the defender in the tolbooth of Edinburgh, the keepers where- ' of were ordered to receive and detain him, until he should pay the said two ' sums.'

Against this interlocutor Vary petitioned, setting forth, that he was only a servant; and therefore praying, that procedure might be sisted till the gentlemen of the hunt might be called in the process.

The sheriff upon answers, refused this petition; upon which the Earl of Errol and others raised a suspension; in which they *insisted*, That, by law, they were entitled to hunt where they pleased, and were entitled to keep Vary as their servant to take care of their dogs.

Lord Edgefield Ordinary on the bills reported the same to the Court; upon which the following interlocutor was pronounced:

' THE LORD ORDINARY, after advising with the Lords, passes the bill upon caution, prohibiting and discharging Richard Vary, the Earl of Errol, and others, contributors to the Edinburgh hunt, suspenders, or any in their company, from hunting or pursuing game by themselves, or with horses, within

No 2.

An interdict issued against persons, altho' possessed of the legal qualifications, who had hunted in inclosed grounds, without the permission of the proprietor.

No 2. the inclosures, or upon the grounds of the chargers or their tenants, and from trespassing upon said inclosures, till such time as this suspension shall be discussed; and that under the penalty of L. 5 Sterling *toties quoties*, to be levied from the suspender, or any of them, conjunctly and severally.'

Reporter, *Edgefield.*

Act. *Rae.*

Alt. *Burnet.*

J. M.

Fel. Dic. v. 3. p. 248. Fac. Col. No 118. p. 278.

1778. *March 3.*

MARQUIS OF TWEEDALE *against* HUGH DALRYMPLE, and Others.

No 3.
No person is entitled to hunt upon the inclosed grounds of another, without the consent of the proprietor.

THE Marquis of Tweedale brought an action against Mr Dalrymple, and others, in which he charged them with having broke into his park of Yester with horses and hounds, either in pursuit of game, or to search for it. The chief object of the action was to have it found and declared, 'That neither they, nor any person, has right to hunt game within said inclosures without leave of the pursuer.'

The defenders *admitted*, That they were liable for all damages done by them on the grounds of others, in the course of the sport; but *insisted*, that, as they were possessed of the legal qualification, they were entitled to hunt on all grounds without restriction. In support of this defence,

Pleaded for the defenders; Animals *feræ naturæ* are *res nullius*, and, wherever they are found, every one is equally entitled to acquire a property in them by occupancy. Hunting these animals, therefore, without express enactment in its favour, is free and common to all, in as far as municipal law has not denied or restricted the use of it.

The ancient law of Scotland left the exercise of hunting, without restriction, to the whole inhabitants; M. T. C. B. c. 52. Forrests and warrens are mentioned as exceptions, into which game could not be pursued; and the exception confirms the general rule, that game could be followed on every other property.

Hunting and hawking are favourites of the law, and considered in our ancient statutes as the only lawful method of killing the game. The old acts for preserving the game proceed on this principle.—Guns, bows, and all other methods, are prohibited, act 1551. c. 9.—1555. c. 58.—act 1597. c. 270. And, when killing game by fowling-pieces and pointers was admitted of, yet it was under the severe restrictions of the act 1685. c. 20. But hunting, encouraged by law as a manly exercise, was not denied to those excluded by this statute from fowling. No qualification is at this day necessary to hunting, but that required in the act 1621, c. 31, ratified by the act 1685, c. 20. viz. the having a plow of land in heritage.