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# CASES

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TRIED IN

## THE JURY COURT.

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PRESENT,

LORDS CHIEF COMMISSIONER, CRINGLETIE, AND MACKENZIE.

ROBERTS V. EARL OF ROSEBERRY,

1825. Dec. 7.



An action of damages by a tenant of a lime quarry against his landlord for having stopped his working by an interdict.

Damages to a tenant interdicted from working a lime quarry.

DEFENCE.—The interdict was not obtained by misrepresentation, and the operations of the pursuer were not conducted in terms of his bargain.

### **ISSUES.**

#### CASES TRIED IN Dec. 7,

Roberts v. Earl of Roseberry. ١

"John Laing, factor for the defender, acting in name of the defender, and by his authority, let in lease to the pursuer, for the period of ten years from and after Martinmas 1819, a lime-rock or quarry, the property of the defender:

"Whether, on or about the 12th day of Sep-"tember 1820, the defender did, in violation of the said missive of lease, apply for and obtain from the Sheriff of the county of Linlithgow an interdict prohibiting the pursuer from working the said lime-rock or quarry?--and Whether, by the said interdict, the pursuer was prevented from working the said rock or quarry, from about the said 12th day of September 1820, until on or about the 11th day of November 1821, or any part of the said period? all to the loss and damage of the said pursuer."

Moncreiff, in opening the case, and in reply for the 'pursuer, stated the facts, and that the 'interdict was 'recalled'; 'that the defender had no right to stop the working; and that this action was relevant. The defender can, therefore, only make statements in diminution of damages, as the interdict was taken at his risk.

A tenant deprived for a certain The pursuer and John Harvey had taken a

#### 1825. THE JURY COURT.

coal-pit, part of the produce of which was employed in burning the pursuer's lime. When Harvey was called as a witness,

Jeffrey, for the defender, objects, This is consequential damage. The witness is interested.

Moncreiff.—The damage is direct. The pursuer became a party to the coal lease with a view to the demand which his lime-work would create. But I withdraw the witness.

LORD CHIEF COMMISSIONER.—The only question is, Whether the damage is consequential or not, as the law is clear ?

Jeffrey.—This is not an action for oppresision, but for being illegally and injuriously stopped in working the quarry. The first question is, Whether he was so interdicted as legally to subject the defender in damages? I submit to the COURT, that, though the interdict was refused, still it is no bar to my now showing that what the pursuer did was illegal. ROBERTS v. Earl of Rose-BERRY.

time of the subject let can only recover direct, not consequential damage.

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LORD CHIEF (COMMISSIONER.—It is proper to bring this under the consideration of the Court at this stage of the cause, and if you have any separate argument you may now state it. Circumstances in which it was held that the Court of Session had put a construction on the terms of a missive of lease, and that it was incompetent to prove that the tenant acted in violation of his lease.

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Dec. 7,

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ROBERTS There is an important consideration in this cause υ. -EARL OF ROSEfrom the insertion of the word violation in the BERRY. issue; but it appears to my brother and myself 'that it would be going too far to rest our decision on that word 'separate from the res circumstantes. This case originates in an application by the defender to stop his tenant from working in the way he was working. question depends on the construction of the words of the missive; they are such as to create doubt in the Sheriff whether the tenant had not transgressed the lease; but on farther consideration he recalls the interdict, and the effect of this is, to put a construction on the clause in the missive in favour of the tenant. That ques-

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the Court of Session, both by advocation and damages, and the judgment by the Sheriff, that the clause did not bar the working, was there confirmed.

tion came in two or rather three shapes before

In these circumstances we must hold that the meaning of the clause has been found, and that it did not warrant the interdict. This clause was under consideration in all the proceedings, and the interlocutors are put in evidence. It is therefore a fact. as much established as if damages had been found due, that this interdict was in "violation of the said missive." This

#### THE JURY COURT. 1825.

being established by the interlocutors, the question here comes to be, Whether the pursuer was EARL OF ROSEstopped, and what is the amount of damages? Upon these it appears to me that a prima facie case has been made out.

Any evidence of the meaning of the clause, or this being in violation of it, appears to me incompetent, as there is a final decree. The evidence should be confined to the second point, as the first is decided by the record, which is not questioned as false.

Jeffrey.-To entitle the pursuer to a verdict he must prove that he was totally stopped. But the best part of the quarry remained open. The profit which their witnesses stated was absurd from its extravagance.

ROBERTS v.

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A witness was then called and rejected, for the purpose of bringing out the point as to the competency of proving that the workings were in violation of the missive.

LORD CHIEF COMMISSIONER.—This case results entirely in a question of damage, which is peculiarly for the Jury.

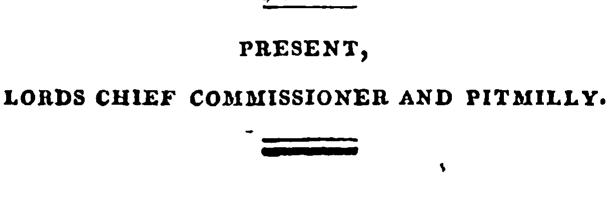
In estimating the damage you have nothing to do with the question as to Whether this was in violation of the missive? as that is a point of law

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HAMILTON v. HAMILTON. which the Court has decided. The questions for you are, Whether the defender made the application ? Whether it stopped the pursuer's workings ? and What length of time he was stopped ? It is said the result of the interdict was not final till decree was extracted. We are of a different opinion, and that he might have returned to the quarry as soon as the interlocutor was pronounced. It is said the interdict only applied to a part of the quarry. Even if this had been proved, it could only have gone in dimunition of damages ; but the evidence on this failed.

Verdict — " For the pursuer, damages " L. 350."

Moncreiff and More, for the Pursuer. Jeffrey and J. A. Murray, for the Defender. (Agents, A. Smith, w. s., and J. & W. Ferrier, w. s.)





HAMILTON V. HAMILTON.

Finding that a tenant was not due a sum claimed as rent for a An action by a minor, an heir of entail, and his curator to recover the rent of a farm for half a