

could not prohibit, specially they being sitting in Parliament in the time; and therefore, in that case, his silence cannot import a consent.

THE LORDS sustained the libel, and repelled the defence, but would not suffer the price of the watch to be proven by the pursuer's oath, but *prout de jure*. See OATH IN LITEM.

Fol. Dic. v. 1. p. 378. Stair, v. 1. p. 119.

No 11.

1663. January 8.

NICOL against HOPE.

In a perambulation of marches, it was *alleged* by the defender, That he had built a park dike on a part of the ground challenged by the pursuer, *sciente et astante domino*. *Answered*, Such a slender presumption of consent is not relevant to take away property, neither was it incumbent upon the pursuer to dissent, seeing he knew that what was built upon his ground would become his own.—THE LORDS repelled the defence, but they thought the taciturnity might operate this much, that the builder might remove the materials of his wall, or give to the pursuer the price of the land cut off from him by the park dike.

Fol. Dic. v. 1. p. 378. Stair.

No 12.

* * * See the case No 49. p. 2200.

1779. November 17.

THOMAS LOMBE against THOMAS SCOTT.

ON the 10th of March 1776, Thomas Scott, merchant in Kelso, commissioned from Thomas Lombe at Rotterdam twenty hogsheads of lintseed for sowing, to be shipped on board the first vessel from Rotterdam to Leith, Berwick, or any of the interjacent ports; mentioning at the same time, that if the lintseed could not be landed before the 11th of April, he did not incline to make any purchase of that kind.

This commission reached Mr Lombe on the 23d of March. At that time there were no ships at Rotterdam destined to the ports specified by Mr Scott, Mr Lombe, however, shipped the lintseed on board a vessel for Newcastle, from whence it might be forwarded speedily, and at a small additional expense, to any of them.

On the 6th of April Mr Scott received Mr Lombe's letter, acquainting him with these particulars, but returned no answer till the 25th; when, upon being informed by Mr Lombe's correspondent at Newcastle, that the goods had arrived, he signified his disapprobation of Mr Lombe's proceedings, and declared his resolution to take no concern in the disposal of the articles sent.

No 13.
Silence of a merchant, to whom goods have been sent contrarily to the commission given by him, imports his homologation of the sender's proceedings.