

D. OF ARGYLE  
v.  
CAMPBELL.

of the defender proves, that he at least never gave permission. The only evidence consists of the attempt to prove interruptions. But the interruptions appear to have been on account of the hour at which the Duke's tenants came; and the regulations made by the tenants as to the manner of taking the seaware, &c. rather confirm than weaken the usage of taking it.

“ Verdict for the pursuer on both Issues.”

*Clerk, Moncreiff, and Fletcher, for the Pursuer.*

*Jeffrey and Cockburn for the Defender.*

(Agents, *J. and M. Ferricr, and Lockhart and Kennedy.*)

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PRESENT,

LORD GILLIES.  
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1819.  
March 13.

SCOUGAL v. LADY MARY L. CRAWFORD.

Damages  
against a pro-  
prietor, for ta-  
king the roof  
off the house  
of a servant.

AN action of damages for taking part of the roof off a house possessed by the pursuer.

DEFENCE.—The house belongs to the de-

fender, who wished to repair the roof; and the pursuer would not quit possession.

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ISSUE.

“ Whether, betwixt the hours of twelve  
“ and one o’clock of the morning of the 19th  
“ November 1816, or about that time, a  
“ number of persons, at the instigation, or  
“ acting under the orders, or by the authori-  
“ ty of the defender, did proceed to a dwel-  
“ ling-house called Crawford Priory Cottage,  
“ then in the occupation of, and inhabited  
“ by, the pursuer and his family; and did  
“ then and there, under cloud of night, vio-  
“ lently proceed to barricade one or both of  
“ the doors of the said house, and to tear off  
“ and throw the thatch from the roof of the  
“ said house; or did commit other acts of vio-  
“ lence, to the great alarm and damage of  
“ the said pursuer and his family.

“ Damages claimed, as restricted by the  
“ pursuer, to L.1000.”

*Cockburn*, for the pursuer.—This is a simple, and in some respects an absurd case, though it was one of a very serious nature. The pursuer was engaged for a period of

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years as a servant to the defender, and was to have a suitable house. He was, under this agreement, put in possession of a house; and, without providing another that was suitable, the defender sent and caused the roof to be taken off. In these circumstances he is entitled to damages for the insult, as well as the injury.

*Jeffrey*, for the defender.—We maintain that the defender was entitled to take off the roof, but deny all violence or outrage. It was by a personal contract he got possession of this house; and being servant to the defender, she was entitled to turn him out when she pleased. The method of doing it was rendered necessary by his refusal to leave the house. The action of removing was unnecessary, as this was not a lease.

LORD GILLIES.—In every case of this sort, there are two questions.—1st, Whether damages are due; 2d, The amount.

In many cases the Jury are the proper judges of the whole case. But when a plea in justification is stated, it becomes the duty of the Court to dispose of it. In the present case, it appears to me that it would have been

as well if the defender had not attempted to justify, as I am clearly of opinion that she acted illegally, and that the pursuer having suffered, he is entitled to damages.

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In this country, a person is entitled to repel aggression; and if any one forces his way into my house, I am entitled to turn him out. The counsel for the defender says, this house belonged to the defender, and as the pursuer refused to leave it, he is to be held in the situation of a person who forced his way into it. This, in my opinion, is an erroneous view of the case. The house belongs in property to the defender, but the pursuer was in the legal possession of it, and it was therefore his castle.

His title was a personal contract, by which he was to have a suitable house, garden, &c. If the defender had refused to implement this contract, the pursuer must have brought his action; but she did implement it, and the pursuer being put in possession, his right was completed, and was as effectual as by any lease. But he was bound to remove; not, however, at the will of the defender, but of the law; and he had a clear and indisputable right to keep possession, till a house was provided, such as the Judge, and not the defender,

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thought suitable. In my opinion, the action of removing was a *proper* one; and in that action it was found that the house provided in Cupar was not suitable.

It is said there is something ludicrous in this case; and this is true; but the conduct of the defender might have led to very serious consequences; as, if the pursuer had resisted, and death ensued, I am bound to say, he would have been justified in the sight of God and man.

There was more blame on the part of the defender than injury done to the pursuer; but as this is not a prosecution at the instance of the public prosecutor, we are not entitled to consider the degree of blame which attaches to her, but merely the extent of his suffering, which happily was not very considerable.

**Verdict for the pursuer—damages L.250.**

*Cockburn and H. Drummond, for the Pursuer.*

*Jeffrey and Hope, for the Defender.*

(Agents, *Alexander Goldie, w. s.* and *George Lyon, w. s.*)