

1758.

 ROSS
 v.
 ROSS, & C.

Pleaded for the Respondents.—The interlocutors complained of are warranted, not only by the substantial rules of justice, but by the common forms of the Court. It would be repugnant to the ends for which courts are instituted, and to constant experience, if process for producing deeds, or for making proofs, were refused *in limine* to a plaintiff, whose case is properly alleged in point of law; and if the facts be properly alleged, so as to bear legal relevancy on the face of them, the regular practice of the Court warrants the sending parties to proof before answer, because judgment of the Court can be governed only by the facts proved.

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *Al: Forrester, Alex. Wedderburn.*

For the Respondents, *C. Yorke, Fred. Campbell.*

NOTE.—Lord Elchies has this note in regard to this case:—
 “The Lords found qualifications condescended on not sufficient, and, therefore, remitted to the Ordinary to hear further. I own I had a good deal of difficulty in the case. I thought much would depend on the last Balnagowan’s capacity or degree of his weakness; and as no challenge was brought for nearly thirty years after his death, I thought it dangerous to allow a vague proof at large of his weakness, without condescending on some particular instances of his weakness, and, therefore, voted for the interlocutor.”—*Vide* Elchies, vol. ii., p. 159.

1758.

JOHN MILLER of Greenock, Tobacconist, *Appellant;*

 MILLER
 v.
 ALEXANDER.

WM. ALEXANDER, Merchant, Edinburgh,
 Agent for the Farmers’ General in France, *Respondent.*

House of Lords, 19th April 1758.

DAMAGES FOR FRAUDULENT ABSTRACTION. — Circumstances in which the respondent was held liable to damages for abstraction of tobacco.

The appellant was in the habit of importing tobacco from America, and reselling it again for exportation to France;

and the present was an action of damages brought by the respondent, agent for the Farmers' General in France against him, charging him with fraudulently abstracting from the hogsheads as they arrived from America, a great part of the tobacco purchased by the respondent's constituents, and substituting in place thereof, tobaccos of inferior quality, called *box and babby tobaccos*. On proof the respondent made out his allegations, and the Court found the appellant liable to the pursuer (respondent) as factor foresaid, in damages, and remitted to the Lord Ordinary to ascertain the amount. The Lord Ordinary found him liable in £1643, 1s. 4d., as the total loss sustained upon the cargoes of tobacco therein mentioned, and to this the Court adhered.

1758.

MILLER
v.
ALEXANDER.
Aug. 10, 1756.

Dec. 14, 1756.

Dec. 2, 1757.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged, that the interlocutors complained of be, and the same are hereby, affirmed.

For the Appellant, *C. Yorke, John Dalrymple*.

For the Respondent, *Rob. Dundas, Al. Forrester*.

NOTE.—Unreported in the Court of Session.

THOMAS SCOTT and JAMES YOUNG of
Netherfield, Esq., *Appellants* ;
JAMES COCHRAN and JANET, his wife, *Respondents*.

1759.

SCOTT, &C.
v.
COCHRAN, &C.

House of Lords, 18th January 1759.

DEFECTIVE LEASE—POSSESSION—REDUCTION—DEED—SUBSCRIPTION—SERVICE.—(1) A translation of a lease held not to be reducible under the Act 1696, although it was only signed by the granter on the last page, possession on the lease having followed. (2) Also held it no objection to sue an action of reduction of this lease, that the pursuer had not produced a service as heir, that being unnecessary.

By tack executed between James Young of Netherfield, and James Lawson, James Young for the yearly rent of £11, 2s. 2d., and other covenants therein mentioned, let to