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THE YORK
BUILDINGS CO.
&c.
v.
FERGUSON.

expressly directs the same to be sold "as the same are, have, or *might* have been enjoyed or possessed under the said lease. 4. The same intention to include these wadsets in the sale is apparent in the proceedings of the Court of Session, in directing that sale, and the upset prices at which the wadsets were to be sold, to be increased by the sum of £945, among which wadsets were that of Clerkhill and Downieshill. But further, as the superiority of these wadsets is included in the respondent's purchase, the right of reversion must follow; a point established by the law of Scotland, and particularly by the late decision *Lady Frances Erskine v. Lord Fife*.

After hearing counsel, it was

Ordered and adjudged that the interlocutors of 3d of March 1779 be *reversed*; and that the interlocutor of 1 July 1778 be affirmed.

For Appellants, *Henry Dundas, Ar. Macdonald*.

For Respondent, *Al. Wedderburn, Alex. Wight*.

Not reported in Court of Session.

GEORGE HALDANE, Esq. of Gleneagles, *Appellant*;
The Hon. JOHN ELPHINSTON of Cumber-
nauld, Assignee of the now deceased } *Respondent*.
GEO. KEITH, late Earl Marischall,

House of Lords, 11th April 1780.

JURISDICTION—*RES JUDICATA*—INTEREST.—A claim was preferred to the Barons of Exchequer, acting under a particular act of Parliament, and the amount of the claim adjusted, but the Barons disallowed interest thereon: An appeal was taken to the House of Lords, and dismissed as incompetent: In a new action brought before the Court of Session, held that it was competent to the Court to entertain the question, and objection to the competency repelled; and decerned for the amount of the claims, but without interest. Affirmed on appeal.

For the facts of this case *vide ante* p. 443.

The appeal then taken to the House of Lords from the Court of Exchequer was held to be incompetent; the consequence was, that no judgment was given upon the merits,

and, in particular, upon the question, Whether interest was due, and chargeable upon the debentures?

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The appellant then brought a new action before the Court of Session against the York Buildings Company as debtors, and James Ferguson, Esq. of Pitfour, purchaser of the Marischall estate, and against the Honourable John Elphinston, the respondent, for the principal sum contained in the debentures, together with the legal interest thereon from and since the dates of the foresaid decree, or of the debentures following thereon, and that he had a real lien upon the net balance of the rents and prices of the said whole forfeited estates. The respondent brought a counter action against the appellant, concluding for repetition of the sum which he had received, and also that he had no right to receive the sums claimed, in consequence of an act of parliament (1761) passed for the purpose of removing any disability in his person by reason of his attainder.

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These processes having been conjoined, were reported by the Lord Ordinary to the whole Lords. The respondent pleaded *res judicata*, and besides, that the action was incompetent before this Court, the matter thereof being only cognizable by the Barons of Exchequer. The Lords pronounced this interlocutor:—“ Repel the objections stated by
Nov. 18, 1779.
“ Captain John Elphinston to the competency of the action
“ at the instance of George Haldane before this Court; and
“ sustain his title to carry on said action; sustain the de-
“ fences for the said George Haldane in the action of repe-
“ tition of the sums in the two debentures at the instance
“ of Captain John Elphinston against the said George Hal-
“ dane; assoilzie George Haldane therefrom, and decern;
“ but ordain George Haldane to assign his claim on said
“ debentures to Captain John Elphinston to the extent of
“ the sum he has received out of the balance of the price of
“ the estate of Marischall, so far as not prejudicial to his
“ own right; and find that the said George Haldane is en-
“ titled to retain the sums contained in his two debentures
“ libelled on, received by him in consequence of an order
“ from the Barons of Exchequer; *but find that no claim for*
“ *interest lies to the said George Haldane* upon the said two
“ debentures; and remit to the Lord Ordinary to proceed
“ accordingly.”

On reclaiming petition against the disallowance of interest the Court adhered. Dec. 4, 1779.

Against these interlocutors the present appeal was brought,

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in so far as the disallowance of interest on the debentures was concerned.

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Pleaded for the Appellant.—That the legislature never intended otherwise, by the act 4 Geo. I., than to give the most full and ample remuneration against the estates of those who had joined in the rebellion to those who had suffered loss and damage thereby. The object of the act was, that they might be indemnified. With this view their claim was ordained to be received, a preferable right was to be given them, and a *real* or specific lien upon a particular fund was also to be conferred. The act ordains these claims to be paid out of the *first* of the net produce of these estates; and this being the case, the appellant's debentures ought without any delay to have been immediately paid. While the fund was lying on hand unpaid it was yielding interest; and therefore interest is due upon every view of the case, and upon every known principle of law or equity. Whenever a debt is outstanding interest is due as a matter of right, and there is nothing in the act, under which the claim is made, which leads to the supposition that no interest was chargeable.

Pleaded for the Respondent.—That the act of Parliament did not authorize a further demand in name of interest, is already determined by the order of the Barons of Exchequer disallowing it; and by the judgment of your Lordships dismissing the appeal as incompetent,—this result necessarily implying that the Barons, as executors of the act, could do nothing else than what they did; and if they could not, neither could the Court of Session. But supposing it still competent to the appellant to argue upon the construction of the acts made respecting claims upon the forfeited estates, none of them give the least colour for his demand. They are totally silent as to interest upon the claims of sufferers; and it is not competent for the Court to go beyond the act, which must be executed strictly within its letter.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellant, *Al. Wedderburn, Dav. Rae.*

For Respondent, *Alex. Wight, J. Anstruther.*

Unreported in Court of Session.