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REPORTS of CASES ARGUED and ADJUDGED in the KING'S COURTS at Westminster. By GEORGE WILSON, Esq. Serjeant at Law. In Three Volumes. Vol. II. Containing CASES in the COURT of COMMON PLEAS, &c. beginning in Hilary Term in the 26th Year of the Reign of KING GEORGE the SECOND, and ending in Trinity Term in the 9th Year of the Reign of His present Majesty KING GEORGE the THIRD. The Third Edition. 1799.

[1] HILARY TERM, 26 GEO. II. 1753.

STEVENS, OF THE DEMISE OF WISE, *versus* TYRELL. C. B. A custom for a feme covert to surrender her copyhold lands without the assent of her husband is bad.

In an ejectment of copyhold lands this case was reserved at the assizes for the opinion of the Court, which states, that J. Jennings, being seised in fee according to the custom of the manor of the copyhold lands in question, died, and the same descended to his heir at law Frances the wife of William Geary, subject to J. Jennings's widow Henrietta's estate; that Frances the wife of William Geary was admitted, and being solely examined, surrendered the premises to the use of herself for life, remainder to Henry Wise in fee; and that William Geary her husband then living did not join with her, that Henry Wise was admitted to remainder in fee, that William Geary died in 1739, and Henrietta the widow is also dead; and that there is a custom in this manor that a feme covert seised in fee of copyland lands may dispose of her estate without her husband's joining. A verdict was taken for the plaintiff, who claims under the sole surrender of Frances the feme covert, which is void if the custom be not a good one.

After several arguments, the whole Court were clearly of opinion that this was a bad custom; and Willes Lord C.J. in giving the judgment of the Court said, that Justice Burnett (who was now lately dead) was of the same opinion.

It is not stated whether the feme covert by the custom was to be solely and secretly examined, though in fact she was so; nor is it stated that the husband by the custom was to consent though he did not join, and therefore it must be taken for granted he did not consent.

In support of the custom was cited 2 Danv. Abr. 430, pl. 10, where it is said that it is a good custom in a copyhold manor, that a feme covert, with or without the consent of her husband, may devise her copyhold lands to her husband, or whom she [2] pleases; but this is not rightly abridged, and shews what little credit ought to be given to abridgments. The case abridged is anonymous in Moor 123, pl. 268, and the custom there found on a special verdict is, that a feme covert with the assent of her husband may devise her copyhold lands to her husband or any other, which the Court thought was not an unreasonable custom; but that is not the present case, which must be taken to be without the assent of the husband.

HUCKLE *versus* MONEY. C. B. A new trial for excessive damages in assault and imprisonment refused.

Trespass, assault and imprisonment; issue joined upon the general issue not guilty, tried before the Lord Chief Justice, when it was proved for the plaintiff that he is a journey-man printer, and was taken into custody by the defendant (a King's messenger) upon suspicion of having printed the *North Briton*, Number 45; that the plaintiff kept him in custody about six hours, but used him very civilly by treating him with beef-steaks and beer, so that he suffered very little or no damages; the defendant attempted to justify under the general warrant of a Secretary of State, to apprehend the printers and publishers of the said *North Briton*, Number 45, (which is before set forth at length in the case of *The King and Wilkes*, Easter term, 3 Geo. 3,) by virtue of the Stat. of Jac. 1, and the Stat. 24 Geo. 2, cap. 44, but was over-ruled by the Lord Chief Justice; whereupon the King's Counsel, who were advocates for the defendant, tendered a bill of exceptions, which has not yet been argued; the jury gave 300l. damages.

It was now moved by Serjeant Whitaker that the verdict might be set aside, and a new trial had; for that it appeared upon the evidence the plaintiff was only a journeyman to Leech the printer at the weekly wages of a guinea, that he was confined but a few hours, and very civilly and well treated by the defendant, so that 300l. were most outrageous damages in this case, and a new trial he hoped would be granted; and cited *Chambers* v. *Robinson*, 1 Stra. 691, which was an action for a malicious prosecution upon an indictment wherein the jury gave 1000l. damages, and the Court granted a new trial for the excessiveness of the damages. Several other similar cases were cited to induce the Court to grant a new trial.

[206] Serjeant Burland, for the plaintiff, insisted that in cases of tort, which found merely in damages, and are not like debt or assumpsit, the Court will never interpose in setting aside verdicts for excessive damages; that in the case of *Leemàn* against *Allen and Others*, *Reforming Constables*, C. B. in an action of trespass and imprisonment, the jury gave 300l. damages; and this Court refused to grant a new trial, though the plaintiff had not been imprisoned above 24 hours. And in a late case in B. R. for criminal conversation 500l. damages were given against a man in very poor circumstances, as appeared to the Court by affidavit, and yet they would not grant a new trial, but said they could not interpose in cases of tort, unless the damages were very outrageous; but that the jury were the sole judges of the damages

Lord Chief Justice.—In all motions for new trials, it is as absolutely necessary for the Court to enter into the nature of the cause, the evidence, facts, and circumstances of the case, as for a jury; the law has not laid down what shall be the measure of damages in actions of tort; the measure is vague and uncertain, depending upon a vast variety of causes, facts, and circumstances; torts or injuries which may be done by one man to another are infinite; in cases of criminal conversation, battery, imprisonment, slander, malicious prosecutions, &c. the state, degree, quality, trade or profession of the party injured, as well as of the person who did the injury, must be, and generally are, considered by a jury in giving damages. The few cases to be found in the books of new trials for torts, shews that Courts of Justice have most commonly set their faces against them; and the Courts interfering in these cases would be laying aside juries. Before the time of granting new trials, there is no instance that the Judges ever intermeddled with the damages.

I shall now state the nature of this case, as it appeared upon the evidence at the trial: a warrant was granted by Lord Halifax, Secretary of State, directed to four messengers, to apprehend and seize the printers and publishers of a paper called the *North Briton*, Number 45, without any information or charge laid before the Secretary of State, previous to the granting thereof, and without naming any person whatsoever in the warrant; Carrington, the first of the messengers to whom the warrant was directed, from some private intelligence he had got that Leech was the printer of the *North Briton*, Number 45, directed the defendant to execute the warrant upon the plaintiff, (one of Leech's journeymen,) and took him into custody for about six hours, and during that time treated him well; the personal injury done to him was very small, so that if the jury had been confined by their oath to consider the mere personal injury only, perhaps 20l. damages would have been thought damages

sufficient; but the small injury done to the plaintiff, or the inconsiderableness [207] of his station and rank in life did not appear to the jury in that striking light in which the great point of law touching the liberty of the subject appeared to them at the trial; they saw a magistrate over all the King's subjects, exercising arbitrary power, violating Magna Charta, and attempting to destroy the liberty of the kingdom, by insisting upon the legality of this general warrant before them; they heard the King's Counsel, and saw the solicitor of the Treasury endeavouring to support and maintain the legality of the warrant in a tyrannical and severe manner. These are the ideas which struck the jury on the trial; and I think they have done right in giving exemplary damages. To enter a man's house by virtue of a nameless warrant, in order to procure evidence, is worse than the Spanish Inquisition; a law under which no Englishman would wish to live an hour; it was a most daring public attack made upon the liberty of the subject. I thought that the 29th chapter of Magna Charta, Nullus liber homo capiatur vel imprisonetur, &c. nec super eum ibimus, &c. nisi per legale judicium parium suorum vel per legem terræ, &c. which is pointed against arbitrary power, was violated. I cannot say what damages I should have given if I had been upon the jury; but I directed and told them they were not bound to any certain damages against the Solicitor-General's argument. Upon the whole, I am of opinion the damages are not excessive; and that it is very dangerous for the Judges to intermeddle in damages for torts; it must be a glaring case indeed of outrageous damages in a tort, and which all mankind at first blush must think so, to induce a Court to grant a new trial for excessive damages.

Bathurst J.—I am of my Lord's opinion, and particularly in the matter of damages, wherein he directed the jury that they were not bound to certain damages. This is a motion to set aside 15 verdicts in effect; for all the other persons who have brought actions against these messengers have had verdicts for 200l. in each cause by consent, after two of the actions were fully heard and tried. Clive J. absent.

Per Curiam.—New trial refused.

[208] Hilary Term, 4 Geo. III. 1764.

Syllivan *versus* Stradling. C. B. Replevin. Avowry for rent for enjoyment of land under a parol demise.

In replevin for taking and unjustly detaining two heifers of the plaintiff. The defendant first avows that the place in which, &c. is two acres of meadow-land lying and being at a place called Taps Corner, in the parish of Lyng in the county of Somerset, and that one James Harris for two years, ended the second day of February 1761, and from thence until and at the same time when, &c. enjoyed the land in which, &c. as tenant thereof under a demise made to him by the defendant at the yearly rent of 2l. 2s. payable to the defendant yearly on the 2d day of February in every year, and because 4l. 4s. of the rent for the said two years ended on the 2d day of February aforesaid in the year last aforesaid on that day and year, and also at the said time when, &c. were in arrear and unpaid to the defendant, the defendant well avows the taking of the cattle in the place in which, &c. and justly, &c. for and in the name of a distress for the rent so in arrear and unpaid, which rent still remains due and in arrear to the defendant; and the defendant for further cognizance by leave of the Court, &c. as bailiff of John Phillips, well acknowledges the taking of the cattle in the place in which, &c. and justly, &c. because he says that the said place at the time when, &c. and long before, was two acres of meadow-land lying and being at a place called Taps Corner in the county aforesaid, and that the said James Harris for two years, ended on the 2d day of February 1761, and from thence until and at the time when, &c. enjoyed the said land in which, &c. under a demise thereof before made to him by the said John Phillips, at the yearly rent of 2l. 2s. payable yearly on the 2d day of February in every year, and during all that time held the same of the said John Phillips by virtue of the said demise as his tenant thereof at the rent aforesaid, payable as aforesaid, and because 4l. 4s. of the rent for two years, ended on the 2d day of February in the year last aforesaid, and also at the said time when, &c. were in arrear and unpaid to the said John Phillips, the said defendant as bailiff [209] of the said John Phillips, well acknowledges the taking of the said cattle in the place in which, &c. and justly, &c. for and in the name of a distress for the said rent