



u 13. C denobat.

POR

DONA MARIA DE MONTESER, VIVDA DE DON IVAN DE VALLEJO,

CONTRA

DON FERNANDO VALLEJO SOLIS Y CASAVS, SOBRE QVE SE admita la querella contra el dada, y se confir- me el auto de prisión.



ECHO ES CONSTANTE, QVE
aviendo don Fernando cedido a doña Ma-
ria de Monteser la dehesa de los Vallejos,
y el juro de Indias para la cobrança de sus
alimentos, que se consignaron en estos efe-
ctos con clausulas amplissimas para su cobrança, ponien-
dole en su mismo lugár. El cobró la renta de la dehesa y
y juro del año passado de 38. y 39. Y esto consta por el testi-
monio de vn pleito, que siguió doña Maria cótra el inqui-
lino dela dehesa, donde presentó las cartas de pago de dō
Fernando, y el mesmo fue testigo, y las reconocio. Y tam-
bién consta por certificacion de Luys de Soto, de la cobrá-
ça del juro. Con lo qual doña Maria no tiene oy de q co-
brar, y se halla defraudada de sus alimentos, y se ha quere-
llado por incidencia de don Fernando, y pretende justa-

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mente

mente se proceda contra el criminalmente, suponiéndose que mediante la cession, se adquirió a doña María el dominio de la acción, de tal manera, que no puede don Fernando usar de las directas, mayormente auiendo denuncia do a los inquilinos, conforme a la l.3. de nouat. *vt latè tradit*
Surdus conf. 22. vol. 1. ex'n. 29 cum seqq. Y en el num. 35. dice: q
Quando el cedente ponit cessorarium in locum suum, videtur directariū
actionum exercitium mandare; & ideo directae actiones remanēt apud
cessorariū inutiles, ac si non extarent. Y quando en la cession ay
palabras tā amplias y generales, como en la dēste pleyto:
Etiam si nullum interuenerit ex requisitis dictæ l. 3. non potest cedens
aliquid facere in præiuditium cessionarij; vt ex pluribus traddit ipse Sur
dus n. 36. traddit etiam Peguera decis 57. tom. 2. n. 1. ubi ait, quod per
cessionem, & consignationem annalium præstationum acquiritur posses
sio cessionario absque corporali apprehensione, quia in incorporalibus ces
sio est loco traditionis, vt tenet glo. in l. ad eum, ff. de donat. & Bald.
n. l. ex legato, n. 1. C. de legib. Y auiendo cobrado don Fernā-
do esta renta, que no es suya, sino perteneciente a doña Ma-
ría, cuya es, por la consignación cobró lo que no era suyo,
& contrectauit fraudulentemente contra voluntatem domini;
y en estos terminos es sin duda que cometió delicto con-
treactionis fraudulentæ.

Y quando no se le quiera dar este nombre, no se escusa de auer hecho esta cobrança con dolo ex proposito, para defraudar a doña María de sus alimentos: y esto basta para que teneatur ex imine stellionatus, *vt teuctus ille, qui exegit quod sibi*
non debetur, vt tenet Baldus in l. 1. n. 6. vers. Secundo Reuoco, C. de co-
dict. indebiti. Bartol. in l. si fideiussor. & in omnibus. ff. mandat. Farina-
tius confit. 114 v. 59. lib. 2. & in tract. de furcis, quest. 70. per totum,
precipiē n. 41. ubi ait, hoc non solūm procederet quando creditor se falso
supposuit, sed quando nō erat verē creditor ut hic, & in fragm. lit. C.
n. 725. prim. part. & in tract. de falsitate, q. 150. n. 223. ait, quod cedēs
debitum quod exigit, tenetur stellionatus. Y lo mismo es, exigere de-
bitum quod cessit, quia contraria rū eadem est disciplina, & iubatur con-
el texto in l. 2. ff. de crim. stellionatus, & in l. 1. C. eodē. Y en efeto,
quando quis commisit dolū in præiuditium alterius, in quodlibet actu,
nec contractu tenetur criminis stellionatus ultra actionem ciuilem, que
datur, & competit parti ad interessē per totū C: & ff. de dolo, & pén.
extraordinaria arbitrio iudicis punitur, *vt in l. 1. ff. de crim. stelliona-*
tus,

1. In the beginning was the Word, and the Word was with God, and the Word was God. 2. He was in the beginning with God. 3. All things were made by him; and without him was not anything made that was made. 4. In him was life; and the life was the light of men. 5. And the light shineth in darkness; and the darkness comprehendeth it not. 6. There was a man sent from God, whose name was John. 7. The same came for a witness, to bear witness of the light; that all men through him might believe. 8. He was not the light, but came to bear witness of the light. 9. He was a burning and a shining light: and he came into the world. 10. He was sent to give light to them that sat in darkness and in the shadow of death. 11. That they might know and believe concerning Christ, that he was the true light which gives light to every man that comes into the world. 12. He was not the light, but came to bear witness of the light. 13. And the true light, which gives light to every man, was sent into the world; and his own people received him not. 14. But as many as received him, believed on his name; and they that believed on him were not condemned; but they that rejected him were condemned; because they did not receive his light. 15. And this is the condemnation, that light is come into the world, and men loved darkness rather than light; because their works were evil. 16. For everyone that does evil hates the light, and comes not to the light, lest his works should be exposed. 17. For everyone that does good, loves the light, and comes to the light, that his works may be manifested that they are wrought in God. 18. In him was life; and the life was the light of men. 19. And the light shineth in darkness; and the darkness comprehendeth it not.

John de la Pole, Earl of Suffolk