

## NUISANCE.

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A FENCING school over head of a house in Edinburgh has been deemed a nuisance, and the master ordered to remove; 2 Falc., No. 134. A smith's shop in a second storey of a land in Edinburgh, though vaulted. The same 1, *New (Falconer) Coll.*, No. 206. But when the question lately occurred in the case of one Harley, a stocking weaver in ; and again, in the case of one Paterson, a printer in the Lawn-market,—both were allowed. Mere inconvenience is not sufficient.

The case of a lime-kiln was contested, *anno* 1767, between Mr Dewar of Vogrie and William Frazer of Foord, and allowed, 4, *New Coll.*, No. 50.

A house of office no nuisance, 11, *New (Faculty) Coll.*, p. 418, *Clark* against *Gordon*. See the case of a brick-kiln, 4, *New Coll.*, No. 79.

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## PACTUM ILLICITUM.

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1774. July 23. ANN M'KENZIE *against* GEORGE FORBES.

A *pactum de quota litis*, by way of contract, between Ann M'Kenzie and George Forbes, writer, on a summar application, declared by the Lords to be contrary to law, and to the duty of Forbes his profession as an agent; therefore declared void,—and Forbes suspended from his office of agent till 10th November 1774; the Lords declaring that, in this case, they proceeded to no higher punishment, in respect he acknowledged his fault and that it appeared he erred through ignorance and not from any criminal design. See Books of Sederunt. By the contract, Forbes was to have a third of what sum should be recovered, and two-thirds of the expenses; or, in case no sum was recovered, he was to have £5 sterling. On his part, he became bound to carry on the plea till its determination by the Court of Session.

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### ELECTION of the MAGISTRATES, &c. of STIRLING.

ALEXANDER, Jaffray, and Burd, leading men in the politics of the burgh of Stirling, resolved, for the purpose of joining themselves more firmly to each others' interest, to enter into a bond of association, binding themselves to that

effect; and to stand by each other in the management of the burgh, in the election of magistrates and councillors,—in the disposal of offices, election of ministers; and to make an equal division of all profits and emoluments which any of the three should procure from members of Parliament, or otherways. This bond was dated \_\_\_\_\_, was regularly executed on stamped paper, three copies; and was kept a profound secret.

The election of magistrates and councillors, at Michaelmas 1772, was carried to the mutual satisfaction of the bondsmen; but still the bond was kept secret, each of them only telling his friends that they three were as one man.

Previous, however, to the election 1773, the bondsmen differed; and the election proceeded to the satisfaction of two of them, Alexander and Burd, but not of Jaffray: and, soon after the election, the three copies of the bond were all destroyed,—neither was it known that such bond had existed, until some days after the election was completed.

But, upon the discovery that there had been such a bond, a petition and complaint was presented to the Court, founded upon the bond, praying the Lords to find it *contra bonos mores*, unwarrantable and illegal; and, further, to make void the election of magistrates and councillors of Stirling, made at Michaelmas 1773, and to give full costs of suit. This complaint was at the instance of the deacon-convener, and certain other deacons of trades, all members of council. In answer, the bondsmen pleaded, that, although they had entered into such a bond as that above narrated, yet they never had occasion to give it effect in election matters: at Michaelmas 1772, they were unanimous,—and, previous to Michaelmas 1773, they had differed; the bond was totally disregarded, and soon after destroyed. As to the other respondents, (*viz.* the other members of council,) they pleaded, that, as to them, the bond was perfectly unknown,—they never had heard of it, and therefore could not act under it,—they therefore were innocent; and surely a unanimous election made by 21 members could never be annulled or set aside for the fault of three.

The complainers having obtained a diligence for recovering the bond in question, or any copy thereof, or writing relative thereto, the three bondsmen, and also four other witnesses, were examined; from whose testimony the tenor of it was proved much to the purpose already mentioned. And, in a reply, they averred further, that the elections 1772 and 1773 had proceeded under the influence of this bond,—the persons at that time brought into council having been told that the interests of the three bondsmen stood in one bottom, and being taken bound to support their joint interest.

The Lords, at advising the complaint, answers, replies and duplies, allowed a proof at large; and, upon advising that proof, they pronounced the following interlocutors:—