

the tacksmen forty four pounds Scots for each boat yearly; that during this time they were to be as *adscriptitii* or *villani* astricted continually to their respective boats, so that not one of them, during all that time, could remove from the village of Johnshaven, or so much as from one boat to another. Two of the above fishers being under age when they signed the contract, raised a reduction thereof, upon minority and lesion. The defence was, that there was no lesion, fishing being the pursuer's trade, and which, should they be loosed from this contract, they could follow under some other master, or in some other place. This contract was notwithstanding reduced, as being too great a restraint upon natural liberty.—See APPENDIX.

Fol. Dic. v. 2. p. 19.

No 5.

1735. January 15. STALKER against CARMICHAEL.

CARMICHAEL and Stalker entered into a co-partnery of bookselling within the city of Glasgow, to continue for three years; and because the place was judged too narrow for two booksellers at a time, it was stipulated, 'that after the expiry of three years, either of them refusing to enter into a new contract upon the former terms, should be debarred from any concern in bookselling within the city of Glasgow.' In a reduction of the contract, the LORDS found, the debarring clause in the contract is a lawful paction, and not contrary to the liberty of the subject.—See APPENDIX.

Fol. Dic. v. 2. p. 19.

No 6.

SECT. III.

Parents, Tutors, &c. taking money under the name of a
Gratification.

1622. July 30. CARNOUSSIE against AUCHANACHIE.

IN a suspension raised by Carnoussie, the LORDS found a bond of five hundred merks unlawful, which Auchanachie had taken from Carnoussie for his furtherance of the block of Pittindreich, pertaining to Auchanachie's sister's son, who was interdicted to him; because an interdictor should take no profit for any block of land pertaining to the man interdicted to him. And albeit the bond did bear borrowed money, yet Auchanachie was made to swear the

No 7.

No 7. true cause, which being confessed as said is, the letters were suspended *simpliciter*.

Fol. Dic. v. 2. p. 20. Haddington, MS. No 2664.

No 8.

1624. July 24.

ROSSIE against Her CURATORS.

SUSPENSION of a registered bond of 200 merks of principal, and L. 40 of expenses: *Ratio*, no money received, nor good deed, and the man suspender who is cautioner, and the woman is principal, being to marry together, as now they are married, the charger, at the least his father to whose behoof the bond was made, being curator to the woman, would not deliver the woman's evidents till he got this bond, which was no just cause of the bond, and so the bond is given *ob instrumenta deposita reddenda*, which is a shameful cause; and refers this to their oaths, father and son.

Find the reason relevant, and grant letters to warn them to give their oaths.

Clerk, *Durie*.

Fol. Dic. v. 2. p. 20. Nicolson, MS. No 560. p. 387.

No 9.

A tutor in law having by the advice of friends, granted a factory to the pupil's mother, who on that account gave him a bond for a considerable sum, the Lords found this an unlawful transaction; for a tutor, though he may grant a factory, ought to make no profit to himself upon any engagements he enters into for behoof of the pupil.

1639. February 27.

MUSHET against Dog.

ONE Mushet being served tutor lawful to his brother's bairns, transacts with Elizabeth Dog, mother to the bairns, and she obtains a factory from him, for which she by the meditation of some friends, obliges her by bond to pay him 3000 merks, which the said friends appointed her to pay; upon the which bond she being charged, suspends, that it was given *ob turpem causam*, viz. for selling of his office of tutory, or for granting of a factory, which is equivalent, the factory being made for sums paid therefor, and which must tend to the prejudice of the bairns, and therefore such pactions ought not to be allowed in judgment, but are reprobate in law; and although the consent of friends was obtained to the said paction, yet that ought not to give warrant to a paction not warrantable in law; especially seeing *rebus integris* the suspender renounces the factory, and is content to reponne the charger to the same, and to his own administration. And the charger *answering*, that it is not now time to offer to reponne, after so long a time, there being more than two years and a half, since the date of his tutory, and where this bond proceeds upon decret arbitral, done by friends, mutually chosen betwixt the parties, and being done by a woman, who then was *major sciens prudens præsens et volens*, and upon her own earnest dealing, there neither being violence nor fraud used against her for doing thereof; for albeit the office of tutory may not be sold, yet there is no reason nor law, which prohibits a tutor to make a factory, and to transact