

ed to the King, each of them, to have conveniency and accommodation for men and horses every day, it having been the King's palace; for which causes he gave them all the privileges and immunities of a burgh royal. *Vide infra, No. 331.*

*Advocates' MS. No. 132, folio 90.*

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Anent APPRENTICES.

WHERE a prentice was bound with a master by the space of five years, more or fewer, and either the master or the prentice dies before the expiring of the prenticeship, it has been questioned whether the whole prentice fee can be exacted yea or no; and the Lords have sundry times found, it being a contract *bonæ fidei, et bonum et æquum* claiming much part therein, the prentice fee should be divided *pro rata temporis* that the prenticeship subsisted, and no longer. *Vide infra, No. 256. Archibald Hyslop. Vide Paulum, in l. 4, p. 5. de Statu liberis. Vandum libro 1. varia: Quæstionum. Infra, July 1677. No. 628.*

*Advocates' MS. No. 133, folio 90.*

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1671. *February 21.*

Anent APPRENTICE FEE.

THIS is an action at a Sutor's instance in the Potterrow, *against* ———, who was cautioner for payment of the prentice fee in the indenture, to pay it. Against which it was ALLEGED, That he could not be heard to seek this prentice fee, because it was offered to be proven, (and a term behoved to be assigned for proving it, though he was in suspension, because it was *facti*,) that the boy staid not half a year with him, and that through his default, who did beat him till he was both blea and bloody, and to the effusion of his blood; and his cruelty was so great, that the boy durst stay no longer with him: and albeit moderate chastisement be permitted to a master, *attamen inhumanum et nullatenus Christianum est sævire in servos, l. 5. p. ult. et l. 6. D. ad legem Aquiliam.* To which it was REPLIED, That in fortification of his charge, he offered him to prove that he used him no otherways than the other sutors in the neighbourhood use their prentices.

My Lord Advocate, before answer to the relevancy, appointed a conjunct probation to both.

*Act. Charg. Beaton.*

*Alt. Harper.*

*Vide Feb. 18, 1680.*

*Advocates' MS. No. 134, folio 90.*

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1671. *February 21.*

————— *against* CORLEY, &c.

ONE having an infestment of annualrent out of two tenements of land lying in the Canongate; and pursuing a poinding of the ground against Couley, and some other possessors.