

piece of work, and cannot do it, but his *fidejussor* offers to complete it, the other party is not obliged to accept it; for *industria personæ eligitur*. *Replied*, It is not usual to forecast such accidents and events as the master's death; and, by the practice of London, though the master or apprentice die the next week, there is nothing repaid, unless specially pactioned: and, in Holland, it is divided into annual payments, and not all given in at the beginning, as with us; though by the canon, civil, or municipal, laws it were otherways.—THE LORDS, by plurality, found a recompence due to the apprentice in that event of the master's death during the currency; but did not think it was to be divided equally *pro rata temporis*, seeing the master had little benefit by his prentice's service during the two years it stood; and therefore would not sustain the repetition for the half, but only for a third of the apprentice-fee; and sustained that answer, that they offered to instruct him by a man past his apprenticeship, and he refused. The custom in Edinburgh is, that the deacon of the trade puts him to a new master.

*Fol. Dic. v. 1. p. 47. Fount. v. 2. p. 637.*

No 2.

1727. January 20.

HORSEBURGH against HYSLOP.

It being objected against indentures between a master and his apprentice, That they were null by the statute, eighth year of Queen Anne, imposing a duty upon sums stipulated by indentures, in regard that, contrary to that statute, five guineas had been paid to the master's wife more than the apprentice-fee inserted in the indentures. The LORDS found it relevant to annul the indentures, that the compliment to the wife was contracted or agreed for at or before signing the indentures; and also found it relevant, that the compliment was given with the master's knowledge after signing the indentures, and before tendering the duty, though not previously bargained for.

*Fol. Dic. v. 1. p. 48.*

No 3.

Found relevant to annul indentures upon the statute, 8th of Q. Anne, imposing a duty on the sums stipulated, that a present had been, before tendering the duty, given to the master's wife, with his knowledge, whether bargained for or not.

1738. January 10.

MACLEOD of Cadboll against WILLIAM SINCLAIR, Saddler in Edinburgh.

CADBOLL bound David Ross an apprentice to the said William Sinclair, paid L. 25 of apprentice-fee with him, and likewise became cautioner in the indenture; of which (upon Ross's deserting his master's service) Cadboll brought a reduction on the act *octavo Annæ*, entitled, 'An act for laying certain duties on 'candle, &c.' specifying, That, over and above the apprentice-fee, the defender covenanted the additional sum of a guinea to be paid to his wife, which accordingly was paid some time thereafter, and which, not being inserted in the indentures, inferred a forfeiture of double the apprentice-fee, besides voiding the inden-

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No 4.

A present of one guinea had been given to the master's wife, half a year after the date of the indenture. Found that the forfeiture by the statute is double the sum so re-