

denture, but, likewise, of the apprentice not having been at sea before the date of the indenture; and that the pursuer had failed in this particular. The judgment was, 'find the defender not liable in damages to the pursuer.' (See JURISDICTION—of the Court of Session—of the Admiral Court.)

No 11.

A&C. Crobie, Erskine.

Adv. Advocate, Solicitor, Hay Campbell.

Fol. Dic. v. 3. p. 32. Fac. Col. No. 35. p. 59.

Wallace.

1789. December 22.

EDINBURGH GLASSHOUSE COMPANY, against JOHN SHAW.

SHAW was bound as an apprentice to the late Alloa Glasshouse Company; by whose articles of copartnership, it was allowed to each partner to sell his share, and transfer his place in the company to any person whatever, so that no certain reliance could be had on the continuance of any individual member.

The indentures bore, on the one hand, that Shaw, during the term of his service, which was seven years, should work 'in the Glasshouse at Alloa, or at any other glasshouse he might be ordered to by the said company, or their manager for the time;' and, on the other hand, that the company 'should cause him to be instructed in the different branches of glass-making.'

Within two years after the date of the indentures, the company resolving to give up business, conveyed to a trustee, for the purpose of its being sold, the whole of their stock, in which they comprehended 'the services of the workmen and apprentices engaged to their works.'

The effects were all purchased by the Edinburgh Glasshouse Company, in whose favour a disposition, specially mentioning the transfer of those services, was executed.

Shaw continued for several months to serve at the works under his new masters, but at length he withdrew from them, and engaged himself elsewhere. They still asserted their claim to his service; and the judge-ordinary having sustained that claim, granted warrant for his imprisonment, until he should find caution to return to the work that he had deserted. He then brought the question before the Court by suspension; and

THE LORD ORDINARY pronounced judgment as follows: 'Finds, That if the original partners had severally sold or transferred their shares to a new set of partners, the new company, or set of partners, would have been bound by the indentures, and intitled to the services thereby stipulated; finds no relevant or sufficient ground to distinguish the case in question from the case supposed, all the partners having in this case concurred in transferring their right of partnership, particularly the indentures, to a new company or set of partners; and also finds that they were entitled so to do by the true intent and meaning, and ex-

No 12.

The indentures of an apprentice to one trading company, not assignable to another, tho' carrying on the same trade, and though by the articles of partnership a continual and indeterminate change of individual members be admitted.

No 12. 'prefs words of the indenture ; and therefore finds the letters orderly proceed-
'ed.'

In a reclaiming petition, Shaw *pleaded*: A *delectus personæ* is implied, whenever a free man engages his service. No master can assign over his servant or his workmen, without their consent ; nor are they required to justify their refusal by offering any reason for it. Could such an assignation be voluntarily made, the indenture of an apprentice might still more be adjudged for the debts of the master, might be arrested by his creditors, and might become the subject of competition in a multiplepinding ; consequences too novel and alarming to liberty even to be mentioned. No apprentice's indenture ever passed to the master's heirs ; on the contrary, an action of repetition of the apprentice-fee arises on his death, though indeed it may be eluded by an offer to fulfil the obligations of the master. Fountainhall, 17th February 1711, Cutlar *contra* Littleton. No 2. p. 583.

Nor in the case of an apprentice to a company is there any exclusion of the same *delectus*. Were a lease of lands granted to such a company, admitting a change of members, but exclusively of assignees, it would not give validity to a transference of the lease, that the assignees were not more different from the original company, than it would have become by the gradual change of members ; or that these individual assignees might have thus come to constitute the whole of the company. It is true, the members of the company were necessarily subject to change while it subsisted ; but the dissolution of a company is totally different from the change of members, the apprentice not being bound to the new company.

Answered: In general all rights are assignable, Stair, 3. 1. 15. ; but there is an exception in the case of *delectus personæ*. In contracts for performance of work or service, these having no connection with the person of the creditor, are plainly nothing else but obligations *ad factum præstandum*, which are just as assignable as any other debt or right. If a person contract with a labourer to do any work on his estate, it seems clear, that such a contract could be effectually assigned to a purchaser of the estate. Ordinary cases of apprenticeship indeed imply a *delectus personæ* ; but in the present instance there would have been absurdity in the idea, when applied to a company, the members of which were, by the constitution, changing from time to time ; so that after any given period, though the apprentice was to continue as much bound as ever, it could not be said that any one individual, the supposed object of his *delectus*, would remain. Nor, by the indentures, was he to expect any particular manager of the works to instruct him, as that officer was equally liable to be changed. The only *delectus* that the circumstances admitted of, was that of place ; but this is excluded in express terms.

The Court at first adhered to the Lord Ordinary's interlocutor ; but afterwards the idea prevailed, that indentures of apprentices were, in their nature, so far from being a subject of commerce, that the specialty of this case could not justify the transference. And, by a final judgment,

THE LORDS altered that interlocutor, and suspended the letters *simpliciter*.
(See PERSONAL and TRANSMISSIBLE. See SOCIETY.)

No 12.

Lord Ordinary, *Gardenston*.
G. Fergusson,

For Edinburgh Glashouse Company, *Lord Advocate*,
Alt. *Dean of Faculty*, *M. Ross*. Clerk, *Home*.

Fol. Dic. v. 3. p. 32. Fac. Col. No 100. p. 183.

Stewart.

1793. June 26.

JAMES TURNBULL and MALCOLM MACDONALD, against Sir GEORGE HOME, Baronet.

ALEXANDER M'KENZIE, originally a seaman, in December 1789, bound himself, as apprentice for four years and a half, to James and Alexander Rannie, flaters and glaziers in Edinburgh.

In 1791, he, on account of some disagreement with them, left their service, upon which they obtained a warrant from the Justices of the Peace, to imprison him, till he should find caution to fulfil his indenture.

In a suspension, which is still in dependence, James Turnbull and Malcolm Macdonald were his cautioners.

In spring 1793, Mackenzie entered into the Navy, as a volunteer, with Sir George Home, then regulating captain at Edinburgh; against whom Turnbull and Macdonald brought a suspension and interdict.

For Sir George Home it was

Pleaded: An engagement to serve in the Navy supercedes all former engagements, whatever claim there may thence arise against the party himself for damages. There is no authority for distinguishing the case of an apprentice from that of a person under any other engagement. If there had, the enactments of 2d and 3d of Anne, c. 6. § 4, 15. and 17. and 4th Anne, c. 19. § 17. exempting persons bound apprentices to the sea from being impressed, in certain cases, would have been unnecessary; and there is no reason why an apprentice to a trade at land should be in a better situation.

Answered: The contract of indenture is, from its utility, peculiarly deserving of protection: It gives the master a real right in the person of his apprentice. Hence it has always been understood, that an apprentice cannot be impressed, and still less enter voluntarily into the service of the public.

The acts of Queen Anne have no connection with the present subject. It may be true, that where a sailor has regularly entered, his former engagements are at an end; but the question here is, whether Mackenzie was capable of entering?

THE LORD ORDINARY reported the cause on informations.

Observed on the Bench: A person bred to the sea, who afterwards binds himself apprentice to a trade, may be impressed, and consequently may enter volun-

No 13.

A person bred to the sea, who afterwards binds himself apprentice to a trade, may either be impressed or enter voluntarily into the service of the Royal Navy.