

instructed that the husband was *levis*, yet the interdiction is null, being to his own wife, who cannot be his curator; being *sub potestate viri*, nor curator to any other, much less can her husband be made her pupil, contrary to the law, divine and human; neither could the bond be effectual, as a provision adjected to the contract of marriage, because it being from a husband to his wife, so soon as he was married it returned to himself *jure mariti*, because nothing can consist in the person of the wife which belongs not to the husband *jure mariti*, being moveable, except an aliment formerly constituted to her in a competent measure. The pursuer *answered*, That she opposed the bond, and further offered to restore to the defender all that he gave for the disposition of her life-rent.

THE LORDS, after they had reasoned the several points *in jure*, and found, that, without the offer, the bond could not be consistent as an interdiction, in so far as concerned the husband to annul the disposition, but were inclined to sustain the same for the wife, in so far as might extend to a competent aliment of her family to herself, daughter, and servants, not excluding her husband; yet they found the offer so reasonable to repay the sum paid for the life-rent, being 5000 merks, and the life-rent itself, being eight chalders of victual and eight hundred merks, that they found the effect of the tenor would be to restore either party *hinc inde*, but desired the pursuer to let the defender keep the possession of the house and lands, wherein there were many woods newly cut, he finding caution to pay her eight chalders of victual and eight hundred merks, which his father was obliged to make them worth by the contract of marriage.

*Fol. Dic. v. 2. p. 19. Stair, v. 1. p. 189.*

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## S E C T. II.

### *Pactum contra Libertatem.*

1612. March 6.

WEDDERBURN against MONORGUN.

A CONTRACT whereby a man for assythment of slaughter, for the which he was prisoner, binds himself to perpetual banishment, and never to return to the Kingdom, nor to seek licence nor warrant for his returning, under a great pecuniary pain, not found lawful to infer contravention and payment of the sum, because the King's privilege cannot do that without the King's consent, especially he, as being convicted of a capital crime. It was remembered, That the

No 2.

No 3.

Paction of perpetual banishment, in lieu of assythment for slaughter, was found unlawful without the King's consent.

No 3.

Laird of Drum and my Lord Forbes obtained the King and Council's consent to their contract of banishment of John Forbes of Cossundie, and his accomplices, and that the decreet-arbitral betwixt the Arthours and Walleis, for banishment of the Walleis, was not sustained till it was ratified by the King.

*Fol. Dic. v. 2. p. 19. Haddington, MS. No 2427.*

No 4.

1632. March 24. LAIRD OF CAPRINGTON *against* GEDDEW.

ONE Geddew a collier, gives his bond to the Laird of Caprington, to serve and work at his coal-heughs during all the days of his lifetime. Notwithstanding, he leaves the Laird, and enters in service with the Laird of Craigie-Wallace. Caprington pursues the collier upon his bond. It was *alleged*, that the bond was made *contra bonos mores*, and christian liberty, and of the nature of a bond of man rent. The LORDS repelled the allegiance.

*Fol. Dic. v. 2. p. 19. Auchinleck, MS. p. 17.*

\* \* \* Durie reports this case :

In a pursuit against Geddew, for payment of certain sums, for being absent from Caprington's work, at his coal-heugh, contrary to the tenor of Geddew's bond, whereby he had obliged him to work at Caprington's coal-heugh during all the days of his lifetime ; and the Laird of Craigie-Wallace, who was master to Geddew compearing to defend him ; *alleged*, that this bond was null, and ought not to be sustained in any christian nation, seeing it was against good manners, and christian liberty, to take any person perpetually bound to a perpetual and miserable servitude, and also against the acts of Parliament, which prohibit all leagues and bonds among the subjects, as the 43d act 6th. Parl. Queen Mary, and 12th act 10th Parl. James VI. For it is against all equity and natural liberty, to take the free liege of his Majesty obliged to perpetual servitude. This allegiance was repelled, and the bond found lawful and sustained.

Act. — & *Gilmor*

Alt. —

Clerk, *Gibson*.

*Durie, p. 632.*

1728. December . . .

ALLAN and MEARNs *against* SKENE of Skene, and BURNET of Monboddø.

No 5.

THE tacksmen of the fishing boats belonging to the village of Johnshaven, entered into a contract with the masters and crews of several of these boats, by which they became bound for the space of three nineteen years, to pay to