

No 97.

journeymen weavers, though a few perhaps may be masters of a loom or two, which they let out for hire; and the trifling amount of their contributions, are so many proofs, that the co-partnery could not be intended for carrying on a trade, or meant for any other purpose, than as a cover to an illegal combination for increasing the rate of wages. Indeed, by an express clause of the contract, the partners are taken bound not to work under the rates which shall be fixed by the directors.

An instance of the same kind, occurred in 1762, in the case of the Woolcombers of Aberdeen, who had entered into a society, under pretence of raising a fund for the support of the aged or disabled persons of their trade; but, as there was reason to believe that there were different purposes at bottom, the Court found, "That such combinations of artificers, whereby they collect money for a common box, inflict penalties, impose oaths, and make other by-laws, are of dangerous tendency, subversive of peace and order, and against law; and, therefore, prohibited and discharged the woolcombers to continue to act under such combination or society for the future, or to enter into any such new society or combination."

Reference was also made to the statute 6th Geo. I. cap. 18. § 18, as prohibiting the acting as bodies corporate, or raising transferable stocks without legal authority; though it may be doubted how far that statute, commonly known under the name of the Bubble act, is applicable to this question.

"THE LORDS found, that the contract and agreement in question was not intended for carrying on a manufacture, but is an illegal combination, and of dangerous tendency to society. And therefore found the reasons of reduction relevant and proven, and reduced and decerned accordingly; and found the defenders liable in the expense of extract."

Reporter, Gardenston. Act. Wight. Alt. H. Dundas. Clerk, Ross.
G. F. Fac. Col. No. 30. p. 248.

1772. December 12. MITCHELL against BAIRD.

No 98.

A missive was granted to give no opposition to the reduction of the verdict of a jury. Suspended as *contra bonos mores*.

THE LORDS adhered to an interlocutor of the LORD ORDINARY, "sustaining this reason of suspension of a decree of an inferior court, that the missive libelled on was *contra bonos mores*."

The missive was of the following tenor: "March 27. 1766, Sir, As you have, of this date, given me your missive to give no opposition in the process of exhibition and reduction of the verdict of a jury at your instance against Janet Stevenson, my spouse, for which I promise to pay you L. 155 Sterling, in case I succeed in said process, as witness my hand."

The relative missive was of this tenor: "March 27. 1766, Sir, As you have, of this date, given me your missive for L. 155 Sterling, in order to yield all

claim of defence in the process of exhibition of the verdict of a jury, where-
in your wife, Janet Stevenson, is found fatuous, so I hereby promise to give
you no opposition in any respect in the reduction and exhibition of the said
verdict, or any other in my name, or for my behoof, by either word or writ,
from me, in any manner of way ;” and, upon the successful issue of the pro-
cess of reduction therein mentioned, the present action for payment of the sti-
pulated sum of L. 155 was brought, and, *prima instantia*, a decree passed for it ;
which the Court reversed.

No 98.

Act. *W. Nairne.*Alt. *Rae.*Clerk, *Campbell.**Fol. Dic. v. 4. p. 26. Fac. Col. No 41. p. 111.*

1783. February 28.

AITCHISON *against* ———

THE LORDS found it was unlawful for a person intending to bid at a roup, to
give money to others that they might refrain from bidding. See APPENDIX.

No 99.

Fol. Dic. v. 4. p. 35.

1783. March 1.

MURRAY *against* MACKWHAN.

A tenement situated in the town of Kirkcudbright was exposed to judicial
sale at Edinburgh. The only persons who intended to purchase this subject
were Mackwhan, together with William Johnston and John Hutton, all of
whom were commissioned by other people for that purpose.

No 100.
Combination
of intended
offerers at a
sale.

These men, desirous to take advantage of their situation, by acting in con-
cert, formed the following scheme. One of them, for their common benefit,
was to purchase the subject at the upset price. Each man was then to mark
secretly on a slip of paper the highest offer which he had been commissioned
to make, and he whose offer was found on comparison to exceed the rest, was
to be preferred to the purchase ; whilst the excess of that highest offer beyond
the upset price was to be distributed among the associates to the amount to
which their several offers should have concurred. The tenement being sold
for L. 300, the upset price, the result accordingly was, that as Hutton's com-
mission exceeded that sum in L. 98, that of Johnston in L. 210, and that of
Mackwhan in 300 ; so to the extent of L. 98, all their offers thus far concur-
ring, there fell to be an equal division among them ; and two of them, Johnston
and Mackwhan, likewise uniting in the offer of L. 210, the excess of that sum
above the former offer came to be shared between them ; but here the distri-
bution ended ; the concurrence reached no farther. Mackwhan being of course
preferred to the purchase, granted bills to his associates for those respective
sums.