

1775. July 13. JOHN GARDNER against SMITH and WARDROBE.

IN November 1771, an indenture was entered into between John Smith, for whom John Wardrobe was cautioner, on the one part, and John Gardner on the other part, whereby Smith became bound to Gardner as his apprentice in the art and trade of a wright, in Glasgow, for three years, and Gardner obliged himself to instruct him in that trade; but Smith having left his master about a year after the commencement of the apprenticeship, and the indenture containing a mutual penalty of five pounds; for that sum Gardner caused charge the apprentice and his cautioner.

Their objection to the validity of the indenture itself having been repelled, they set up another, in consequence of which the Lord Ordinary, before answer, allowed them a proof of the facts; and, upon considering the proof, pronounced an interlocutor, to which the Court adhered, on a reclaiming bill and answers:

“Repels the defence, That the charger having given up in a great measure his business of a wright, and betaken himself to the business of a smuggler, seldom attended his shop, and took no care to instruct his apprentice, in respect that it is proved, that although the charger, in consequence of his marriage with an illicit trader, did, for a time, engage in an illicit trade, yet the work in the shop was daily carried on by experienced journeymen; and that it is not proved that the apprentice was deprived of daily instruction by reason of the casual absence of his master.”

A. G. *Hay Campbell.*

Alt. Pat. *Murray.*

Clerk, *Tait.*

Fols. Dic. v. 3. p. 33. Wallace, No 179. p. 97.

* * * Here, there was no formal complaint entered, nor protest taken by the apprentice, before his desertion; which had great weight with the Court.

1776. March 8. MAXWELL against BUCHANAN.

AN indenture betwixt a master and an apprentice bore, That for each day the latter should absent himself without leave, he should pay a shilling, or two days service, at the master's option; and contained likewise a stipulation, that the master should pay the apprentice a certain sum weekly, in name of board. The apprentice was accused of theft by the master, and thrown into prison, having emitted a declaration before a Justice of Peace, confessing his guilt; but the theft being small, he was soon set at liberty, and offered to return to his service; taking protest, that if not received, he and his cautioners should be free of all the obligations of the indenture. The master refused to receive him, and brought action for the penalties, and for damage sustained from the indenture not being

No 9.

Deemed sufficient implement of the obligation on the matter to instruct his apprentice, while the master himself was casually absent, that the work was carried on by experienced journeymen

No 10.

An apprentice had been committed to prison, on an accusation of theft; had confessed, and had been liberated on bail. He offered to return to his service. His master found entitled to refuse; and to have right, from the apprentice and his caution-

No 10.
eis, to damages for each day's absence, till the expiry of the indentures, without deduction for maintenance; which the master would have been bound to afford, had the apprentice continued in his service.

fulfilled.—*Urged* in defence: The extra-judicial declaration was no evidence to convict of theft, and he now retracted that declaration.—THE LORD ORDINARY found, That the defender was guilty of a breach of his indenture; and though liberated on bail to stand trial, and no prosecution had been brought, his master was not bound to take him back; and found him liable to his master for one shilling of damages for each day from the period of his imprisonment to the expiry of the indenture, deducting from this sum the expence of his maintenance, at the rate stipulated in the indenture:—But the LORDS, on a reclaiming petition, altered the last part of the judgment, and found, That the apprentice and his cautioners were not entitled to any deduction on account of maintenance.

Fol. Dic. v. 3. p. 33.

1778. July 28. JAMES CHALMERS *against* CHARLES NAPIER.

No 11.
A master, claiming an apprentice, bound to serve at sea, from an impress-officer, found entitled to no damages, not having produced evidence that the apprentice had not been at sea, before the date of the indenture. It was debated but not determined whether a protection was necessary or not.

ALEXANDER GREGORY, an indented apprentice to serve at sea, was, on 29th December 1777, pressed out of a boat in the Frith of Forth, and carried on board a tender in the Frith. James Chalmers, Gregory's master, applied next day to Captain Napier, regulating captain of the impress service, to obtain his release, offering to show him the indentures. Captain Napier, without looking at the indentures, refused positively to release the apprentice.

Mr Chalmers brought an action, by petition, in the Court of Admiralty, for liberation of the apprentice; and, in the mean time, prayed for an interdict to prohibit Captain Napier from carrying off the said apprentice. Captain Napier pleaded in his answers, that Gregory, having no protection from the Admiralty, had no title to be exempted from the press.

The Judge-admiral pronounced this judgment, 5th January 1778: 'Stops all further proceedings in this cause, in order that, in the mean time, the petitioner may apply to the Lords Commissioners of the Admiralty for redress.' Mr Chalmers presented a bill of advocation, and another of suspension; in both of which he craved an interdict to prohibit Captain Napier from sending the apprentice out of the country till the cause should be determined. The bill of advocation was intimated on the 7th January. The interdict craved in the bill of suspension was granted 10th January. But the tender, with the apprentice on board, had sailed for a port in England on the preceding night. Mr Chalmers then brought an action of damages against Captain Napier.

Proceedings went on upon the bill of advocation, which was remitted to be advised by two Lords in the vacation; before whom Captain Napier was ordained to bring the person of Gregory upon the 15th April. The order was renewed to the 10th March, when Captain Napier produced a letter from the Secretary of the Admiralty, giving, as the reason why the orders of the Court had not been complied with, that Gregory had been sent abroad in his Majesty's service before