

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.

No 13.

arily into the navy. If every seaman could, by entering into an indenture at land, save himself from being impressed, there would be an end to the impress service. This point was deliberately determined on the 28th July 1778, Chalmers against Napier, No 11. p. 574. when it was fixed, that the only exception is in the case of a person bound apprentice to sea for three years, who has not formerly followed that employment; an exemption introduced by 13th Geo. II. c. 17.

The Court unanimously repelled the reasons of suspension, and recalled the interdiction.

Lord Reporter, *Swinton*.
Clerk, *Sinclair*.

For the Suspenders, *D. Williamson*.

Alt. *Maconochie*.

Fol. Dic. v. 3. p. 32. Fac. Col. No 67. p. 144.

Davidson.

1796. January 19.

CUNNINGHAM and SIMPSON, against SIR GEORGE HOME, Baronet, and the COMMISSIONERS for raising Seamen at the Port of Leith.

No 14.

A master found entitled to reclaim an apprentice not bred to the sea, who had entered a volunteer for the Navy, with the Commissioners appointed by 35th Geo. III. c. 9.; but found not entitled to reclaim another, who had been at sea before the commencement of his apprenticeship.

AN apprentice of Cunningham and Simpson, silver-platers in Edinburgh, who had not formerly been at sea, entered as a volunteer for the Navy, with the Commissioners at Leith, appointed by 35th Geo. III. c. 9. § 5. After he was approved of by Sir George Home, the regulating officer, in terms of § 3. of the statute, but before he was turned over to the service, as directed by § 13. his masters obtained a warrant for his imprisonment from the Magistrates of Edinburgh; but being afterwards liberated upon the application of the Commissioners, his masters brought a suspension against them and Sir George Home; who, in defence,

Pleaded, imo, The contract of apprenticeship, like every other obligation of service, falls under the general contract of location, which, unless where the contrary is enacted by special statute, as in leases of land by the law of Scotland, gives no real right in the subject, but merely a personal action for implement, or for damages on failure; *Voet. loc. Cond. § 15. Stair, b. 1. tit. 15. § 4. b. 4. tit. 35. § 8.* Accordingly, an apprentice remains *sui juris* as much as any other servant. He may contract debt, or commit damage, and be imprisoned for it, and thus disable himself from fulfilling his obligation of service; or if he engage with a second master, his former one cannot reclaim him; nor will it make any difference that possession has followed on the first contract; for a partial implement of a contract of service creates no preference for what remains to be performed; the master, like the creditor in a daily pension, from receiving what has become due one day, has no better right to what is to become due the next, than if the obligation was then only to commence.

If this holds in a competition between two private masters, still less can the suspenders prevail against the Crown. An enrolment stamps a character, which is