

1671. *February 22.* Anent the MASTER'S HYPOTHEC.

Talking of the privilege of hypothec the master of ground has in his tenant's corns and other goods ay and while he be paid of his rent. Sir George Lockhart thought it altogether exorbitant and dissentaneous to natural equity, to extend this privilege so far as the master shall have repetition against a poulder arrester, or one who hath *bona fide* without fraud or guile bought the corns or goods in public market, the master having done no diligence himself; for if so, then there should be no free commerce nor traffic in moveables, which were very inconvenient. See Papon, *Lib. 10, Tit. 3, de Louage arresto 4to. Vide D. 29th March, 1639, Hay* against *Elliot*, and the cases there; *item, 15th January, 1625, Stewart; infra, November, 1673, Numero 427.*

*Advocates' MS. No. 146, folio 91.*

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1671. *February 23.* The TUTORs of GOVANE *against* Her MOTHER.

THIS Govane's goodsire and father having been merchants in Glasgow, and her father dying and leaving her, his only child, behind him in her nonage, heretrix of a considerable fortune, what in land, what in money, the goodsire, (of whose acquiring the whole means was,) being on life, became administrator of the law to his grand-child, and in his testament did nominate several persons in whom he much relied as her tutors, being persons also sib to the pupil, who, *ex superabundanti*, took a dative and found caution. The lass being now out of her infancy, viz. past seven years of age, the tutors by an action against the mother, (who yet continues a widow,) crave the person of the pupil may be exhibited to them, to the effect they may have the custody of her, conform to the constant law and practice of this kingdom, which presumes tutors will be more careful of the education of pupils, and not so indulgent, by which many are sadly corrupted, as the mother will be.

The Lords, because they discovered an inclination in my Lord President towards the tutors, they therefore in a bang combined in behalf of the mother, only because it was represented to them that the President was a friend to the tutors, and carried it over his belly that the child should continue with the mother.

*Vide 14th July, 1627, Noble; 4th July, 1629, Langshaw* against *Muire* and the cases there.

*Advocates' MS. No. 147, folio 91.*

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1671. *February 23.* ———— *against* The VISCOUNT of OXFENFURD.

THE late Viscount of Oxenfurd grants a bond to Mrs. Mary Macgill his daughter, of 10,000 merks, which he obliges him, his heirs, and executors, to con-