

the kingdom. This defence was found relevant. *Vide infra*, [No. 251, Nov. 11, 1671, *Mathy* against ———]. *Advocates' MS. No. 243, folio 110.*

1671. *November 10.* CHRISTOPHER LE NOIR, Frenchman, *against* JOHN BROWN, Younger and Elder.

THIS was a summons at this stranger's instance, bearing, How he having come to Scotland upon his affairs, and being kindly entertained by this John Brown, the factor, and invited sundry times to dine with him at his house; one day after dinner, the father declared by his son (who was interpreter betwixt them, Le Noir understanding no Scots, and the father having no French,) that he would very gladly his son should merchandise with him; and if at London he should furnish him with watches or any commodities of that kind, he should not repent it. According to which communing, young John Brown having come to London, and received from the said Le Noir, in trust, near L.200 Sterling worth of merchandise, he now pursues both the father and the son for making payment of the said sum to him; the son as having received the ware; the father as having encouraged him to trust his son, and promising he should not suffer him to be a loser; so that certainly *secutus est fidem patris*, yea the half of this would have sufficed in England, (whose customs we follow where we have none of our own,) to make the father liable: If ye be but present with a man when he takes off merchandise it will bind you; but I think this is only if you say the party is sufficient. And for farther security, he arrests in the father's hands sundry sums of money, as alleged, owing by him to his son, by virtue of his mother's contract of marriage.

ANSWERED,—The first part of the libel is wholly irrelevant, unless they say letter of advice, bill, or some other express warrant or promise, that whatever he should furnish his son should be allowed; and as for the pretended words libelled on, they are so far from inferring any obligation against the father that they deserve no answer.

The Lord Newbayth was clear to assoilye from the summons, as irrelevant. The last part he sustained, and ordained the contract of marriage to be exhibited.

*Vide infra*, *November 8, 1676, Kinneir, No. 502.*

*Advocates' MS. No. 245, folio 110.*

1671. *November 10.* NICOLL *against* HUNTER.

A BOND was craved to be reduced upon this reason, That it was granted *in lecto ægritudinis*, in so far as the granter, the time of the making thereof, was affected with the pest, was enclosed upon that account, never came furth, but within some three or four days thereafter departed.

The Lords assoilyed from the reason, as not relevantly qualifying death-bed, though the bond was *probatio probata* to itself, narrating his sickness of the