

and unfit for any affairs, and that his mother managed all with his consent; and that he accepted the discharges, and that the same are in the charter kist; and that it was *utiliter gestum*, since Beinston would have comprised if they had not paid annualrent. *Item*, the payer was mother to both, viz. both Congilton and the Lady Beinston; and so, presumed to have a like affection and care for both. On thir considerations the Lords decerned both for principal and annualrents.

*Advocates' MS. No. 253, folio 112.*

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1671. November 14. ANDREW MARTIN *against* MR. JAMES KENNEDY.

THIS was a suspension of a decret obtained before the Bailies of Edinburgh, on thir two reasons, *first*, Because the said Andrew, pursuing as factor for an Englishman, no factory was produced, and so, he having no title, the decret was intrinsically null; *second*, Kennedy at that time was Sheriff-clerk of Aberdeen, and so not liable to the Bailies' jurisdiction.

It was ANSWERED to the *first*, They opponed the decret wherein he is holden as confest. To the *second*, He cannot be heard to decline the jurisdiction of the town; because they offer them to prove he resided forty days before the decret pronounced, within the town, or after it; and so by the constant practise, he must be answerable thereto.

This was found relevant, and admitted to probation.

*Advocates' MS. No. 254, folio 112.*

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1671. November 14. ARCHIBALD HYSLOP, Bookbinder, *against* MONTGOMERY of Mackbiehill.

THIS is a charge upon a bond of 200 merks; which was suspended upon this reason, That though the bond bore borrowed money, yet he offered him to prove by the charger's oath, that the true cause of granting this bond was not money received, but allenary for prentice-fee, to be paid by the defender for his son, whom he had bound to the charger. Which being granted, then the charge behoved to be suspended *simpliciter*, and the bond declared void and null; because he offered him to prove that the boy lived not half a year after his entry, and so there can be no prentice-fee due, and the bond falls *in non causam*. It is *causa data causa non secuta*; it now remains with the charger, *sine omni causa*.

ANSWERED,—That whatever would be, where the prentice-fee is due by an indenture, which has mutual obligations on both master and prentice; on the master to teach his calling, on the prentice to serve dutifully; yet it is far otherwise where there is a bond granted for borrowed money: in which case he obliges himself *in omnem casum* for the money, and undergoes the hazard, whatever it may be; unless he be able to make it appear, that *per eum et ejus culpa*