

to have retention of what he paid to persons who had poindings of the ground whereof he was tenant. So that a naked infestment of annualrent, without a decreet of poinding, was no sufficient warrant to him at his own hand to dispose upon the master's rent, who was able to pay his own debt. *Vide Haddington, 4th June 1611, Hamilton.* *Vol. I. Page 132.*

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1681. *February 25.* WILLIAM EWING, Vintner, *against* GRISSEL MALLOCH his Servant.

THE probation between William Ewing, messenger and vintner, and Grissel Malloch, once his servant taverner, being advised; the Lords found, by the oaths of the witnesses, that the said Grissel's reason of suspension and reduction was not proven, *viz.*:—That the bond charged upon was extorted by unjust or illegal force or fear.

Yet it was proven, that Ewing's wife, her mistress, did hold her in within the house, and threatened to send for an officer to put her in the tolbooth, if she would not subscribe the said bond; only, they had counted and reckoned before, and the Lords thought this a *metus licitus* to get a bond for the balance ere she deserted the service; likeas the threats were only *verba jactantia*, and were not put in execution. Yet less dread will serve to a woman than to a man, and to a minor than to one who is come to age.

But the Lords found the other reason proven, *viz.* that the suspender, at the time of granting the bond, was minor, and therefore sustained the bond only in so far as the account for which it was granted can be instructed.—This is very hard; because the servant who takes in all the money as the price of the wines is minor, therefore she shall be reponed without instructing lesion; only it may be said, vintners should not commit this trust to minors, as being a consequential breach of the *Senatus-Consultum Macedonianum*, intrusting your persons with money which they may prodigally waste. But they should count weekly with their servants.

Then ALLEGED, for William Ewing,—Though the suspender, as minor, could not be liable by the bond, yet the same was valid and obligatory against the cautioner, who, in law, had not the benefit of the principal's minority.

The Lords found the cautioner in the bond charged on liable, albeit the minor be not obliged thereby; and find the letters orderly proceeded against the cautioner; reserving action against the minor, on the account and grounds of debt whereupon the bond charged for is founded, as accords of the law.

*Nota.*—The cautioner is only in her bond of lawty and fidelity, but not in the bond for the liquid sum charged on. See Dury, *28th Nov. 1623, Shaw.*

*Vol. I. Page 132.*

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1681. *February 25.* DEBATES before the COMMISSION for PLANTATION of KIRKS.

At the Commission for Plantation of Kirks, it was debated, *1mo*, If they could grant protection to witnesses under caption to come and depone, seeing,