

APPRENTICE.

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1686. December 17.

ZACHARIUS MALVENIUS, Goldsmith in Edinburgh, *against* HEPBURN his  
Apprentice, and RICHARD BAILIE his Cautioner.

It is a charge upon an indenture against a prentice's cautioner for damage and interest. *1mo*, For his running away from his master's service. *2do*, For committing fornication, and so he ought to serve double the time. *Answered*, To the 1st, As for the condescence of his breaking away, all the former ones are past from by his taking him back; *dissimulatione tolluntur*. And for the last, I, the cautioner, offered him back to you within two or three days; and as the law decides in another case, *l. 48. D. de reg. jur. quicquid in calore iracundiæ fit vel dicitur non prius ratum est quam perseverantia et judicio animi factum esse appareat*; and therefore the servant having *brevi reversus, divertisse non videtur, et de minimis non curat lex*; and your cruelty in starving him was the cause of it; for though *modica castigatio* be allowed, yet *venter non habet aures*. And as to the fornication, it was never heard of till the boy was away, and is now raised, and his oath sought when he is in Virginia, merely to vex the cautioner; and though he were at home, it is *in materia turpi et criminali*, and so he cannot depone to the prejudice of his cautioner, a third party, to draw such an extravagant article of damage on him. The LORDS, on Redford's report, find the offering the prentice back again, in the terms of the allegiance, relevant to liberate the suspender thereafter; and that the fornication cannot be proven by the prentice's oath; and and the suspender producing the instrument of offer, the LORDS found it did not prove the offering of him back; but that the witnesses and notary must be examined thereon. (See PROOF.)

*Fol. Dic. v. 1. p. 47. Fountainball, v. 1. p. 438.*

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1711. February 17.

CUTLER *against* LITTLETON.

By indentures past betwixt Homer Grierson, chirurgion in Dumfries, and Andrew Cutler and his friends, in 1706, the said Andrew is bound apprentice to the said Homer, to learn his art and trade of surgery, for the space of four years, and the master was to maintain him in bed and board; for which there was a separate bond given of the same date and witnesses for L. 20 Sterling, which was after-

No 1.

A cautioner for an apprentice being charged upon an indenture for damages, on account of the apprentice having run away, it was found relevant, that the cautioner offered him back, within a few days.

No 2.

The master having died at the end of two years, of a four years apprenticeship, the apprentice