back an unfaithful servant; and that, by his means, he wanted sundry types, and the hand of the Rudiments, &c.: Watson denied that these were committed to his charge.

The Lords, before answer, allowed a conjunct probation anent the way and manner how the tools, printing stamps, irons, and instruments were kept; and if they were committed to this apprentice's sole care and trust; or if there was a promiscuous management and oversight of the haill apprentices and journeymen, and how these instruments came to be abstracted, or if they were lent, and with whom they were found, or how they were returned; and to prove his damages through his master's refusing to take him back again, &c. And the mutual probation being this day advised, the Lords thought apprentices are not to desert their service for every castigation or reproof their master gives them; and though the master be somewhat unreasonable and harsh, yet that is no sufficient cause to dissolve the indentures. Yet, on the other hand, there is a great difference between an apprentice and an ordinary servant: the one may be turned away at pleasure, at least at term-day, without obliging the master to give any reason for his so doing, but he may not act so arbitrarily with apprentices, who being gentlemen's sons come for education; so it must not be in that case *beneplacitum arbitrarium* but *rationale;* and every fault in an apprentice must not be made a reason to thrust them away. And in this case they found no such malversation proven on the apprentice's part as was sufficient to warrant George, the master, to put him away; so that some inclined to cause him enter home again to his service; but neither of them being very desirous of one another, the Lords declared them free, and to discharge each other of the indentures; but finding the master in the wrong, they decerned him to repay the 100 merks of apprentice-fee, and modified the damages to another 100 merks, which they ordained the said George Mossman likewise to pay; and found the letters at the apprentice's instance orderly proceeded for the same.

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1698. *November* 17. GEORGE PITCAIRN, Commissary of Dunkeld, *against* SIR THOMAS DALZIEL of BINS.

GENERAL Dalziel dying, and leaving a considerable moveable estate, a competition arose betwixt the Commissaries of Edinburgh and Dunkeld, who should confirm his testament; and Dunkeld being preferred by a decreet *in foro*, Sir Thomas Dalziel of Bins, his son, did enter into a minute of contract with Mr George Pitcairn, Commissary of Dunkeld, in August 1688, by which he took him obliged to confirm it when required; and he became obliged to pay 1000 merks in full of all dues. Sir Thomas being charged on this, he suspended on this reason, That, by a supervenient law, *viz.* Act 26, 1690, the necessity of confirmation was taken away; and as he could not be forced to confirm, so neither to pay the sum due upon that account; and so it became *indebitum et sine causa.*

ANSWERED,—Whatever might be pretended if he had not entered into an agreement, yet, it being now *res transacta*, he cannot be liberated; nor does the Act of Parliament rescind or annul any pactions or transactions of parties.

The Lords repelled the reason, and found him liable. *Vol. II. Page* 15.