

a charge upon the indenture for the penalty, otherwise the clause of registration would be inept; but in this, as in all cases of penalties, the sum charged for is to be understood as subject to the modifications of the Court.

No 7.

THE LORDS found the defender liable in damages; which they modified to L. 8 Sterling; but refused expences.

A&C. Johnstone.

Alt. P. Murray.

Fac. Col. No 110. p. 196.

W. Johnstone.

1760. November 19.

CHRISTIAN SHEPHARD, Relict of William Mowat, against ALEXANDER INNES.

No 8.

CHRISTIAN SHEPHARD, whose son, James Mowat, had, by indentures executed in May 1750, entered an apprentice to Alexander Innes, commissary-clerk and advocate in Aberdeen, for a term of three years, but deceased in October following, brought a reduction, in 1755, of three bills, of 100 merks each, accepted by her on the 2d August 1750, payable to Innes, as her son's apprentice-fee.

No ground for reducing bills granted for an apprentice-fee, That the sum was not inserted in the indenture, nor the principal indenture stamped; the master having subjoined the sum to an extract of the indenture, and got the extract stamped, on payment of the duty; though this was done after the death of the apprentice. The whole apprentice-fee is exigible, although the apprentice should die before expiration of the indenture. Sufficient to support bills signed by initials, that the party acknowledges they were truly adhibited.

Innes produced an extract of the indenture, stamped, with a notandum subjoined, in these words: 'Notwithstanding that there is no apprentice-fee contained in the foregoing indentures, there was 300 merks really and truly secured to me, the foregoing Alexander Innes.' (Signed) 'ALEXANDER INNES.' As also a receipt wrote upon the back by the defender's brother, then clerk to the collector of the stamp-duties, of this tenor: 'Stamp-office, Edinburgh, 25th June 1755. Received 8s. 4d. for the duties of 6d. per pound, according to the statute.'

THE LORD ORDINARY 'repelled the first reason of reduction, That the bills libelled were not duly signed, in respect it was acknowledged, that the initials subjoined to the bills were truly adhibited by the pursuer: Repelled also the second and third reasons of reduction, That the sum given in name of apprentice-fee, was not filled up in the indenture, and that the indenture was not stamped in due time; in respect of the several acts of Parliament indemnifying such omissions, and that the indenture was now stamped, and the sum given in name of apprentice-fee subjoined to the indenture: And also repelled the fourth and last reason of reduction, founded upon the death of the apprentice before the expiration of the indenture, in respect the non-performance of the contract was not occasioned by any fault on the part of the defender, the master; and affoizied from the reduction, and decerned.'

Pleaded in a reclaiming petition for Shepherd, the pursuer, *imo*, The reason why a subscription by initials has been sustained, is, that it is a party's ordinary subscription that makes a writ effectual. Accordingly, in the case Earl of Traquair *contra* Gibson, 9th February 1723, (*voce* WRIT) the Lords would not sustain a subscription by initials, without a previous proof, that such was the party's

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usual manner of subscribing. But, as that is not pretended in the present case, the objection resolves in this, That initial letters are not writing in the common acceptation of mankind, or in the sense and spirit of the act of Parliament, requiring the subscription of parties, or the attestation of notaries for them.

In the construction of this statute, the pursuer has no occasion to controvert, that great latitude ought to be given, where the party is proved to have adhibited consent, upon receiving value at the time. It is not pretended that she is a party to the indenture, or that the bills are of the same date, or that they were granted in consequence of a stipulation or agreement then made for the apprentice-fee. They are not subscribed before the witnesses to the indenture, or indeed any other: and consequently, as it is the writing, and not the presumed consent, that must support the bills, it is either incumbent on the defender to prove, that these two letters, *C. S.* are the granter's ordinary subscription, or otherwise they fall under the certification of the statute.

*2do*, The acts indemnifying omissions, have in view the case of the apprentice as well as that of the master; and provide, That if the duties are paid within the time limited, it shall be available to give the apprentice the privilege or freedom of using his trade. It is therefore too late to stamp the indenture after the death of the apprentice, who is the person chiefly concerned to supply the original neglect.—And it would be a misconstruction of the statute, to allow the master, from this late act of his, five years after the death of the apprentice, and even posterior to his being cited in this reduction, to validate a null indenture.

But, *separatim*, Supposing it had been even then competent for the defender to supply the defect, yet he has not done it. The act of Queen Anne requires, that the sheet of vellum or parchment upon which the indentures are wrote, shall be stamped. And the fact is, that the original, which lies as the warrant of the extract, still remains unstamped. The duties are payable for every piece of vellum or parchment on which shall be written any indenture, &c.; and therefore, neither in the words, nor intendment of the statute, does the stamping an extract of the indenture answer the directions of the law. And the indemnity-act is strictly confined to the indentures or contracts, which, by the former acts of Queen Anne, require to be stamped, &c.; that is, the principal indenture.—It was improper in the defender to add a syllable to the extract more than is in the principal writing; and the consequence ought to be, totally to discredit the extract *in pœnam* of the defender, who has presumed to make that addition.

The subjoining to the indenture the sum given in name of prentice-fee, is another addition to the indenture, which the defender had no power to make. After writs are once signed, and mutually delivered, neither of the parties can lawfully add or alter one syllable in the writing. The notandum that is made to the extract, or to the defender's copy, was not done *unico contextu* with the indenture itself; but an addition *ex post facto*, with a view to obviate this particular ground of reduction. Besides, the pursuer, in point of fact, cannot agree to the truth of the addition: For she denies, that there was any agreement, at the date of

the indenture, to give 300 merks as apprentice-fee. She was indeed foolishly induced to grant the bills some months before the boy's death; but, as the boy was sickly during the most of the time he was in the defender's service, and did not even learn the rudiments of his profession, she did not expect the money was ever to be exacted.

'THE LORDS adhered to the Lord Ordinary's interlocutor, and refused the defence of the petition, in regard to that point, of the bills not being duly signed; but with regard to all the other points, ordained the petition to be seen and answered.'

*Argued for the defender:* The indenture in question was executed in a way which is very usual. The apprentice-fee is commonly paid down in ready money, and therefore no mention of it made in the indenture. In this case, the defender having no distrust of the pursuer, gave her credit for the money agreed on as the apprentice-fee, which was 300 merks, and did not even insist to have her security for some months thereafter, when she granted the bills in question. These bills were granted for a valuable and adequate consideration, viz. his undertaking to instruct and train up the pursuer's son in his profession. He had performed the most laborious part of this undertaking, during the space that the lad lived with him: And it was owing to no fault or deficiency on his part, that he did not proceed to accomplish the rest. Upon these considerations, the defender thought himself entitled to demand and receive payment of the whole apprentice-fee.

The omitting to fill up in the indenture the sum given in name of apprentice-fee, and the not stamping the indentures in due time, certainly fall under the several acts of indemnity, now that the indenture is stamped, and the sum given in name of apprentice-fee subjoined to the indenture. The several penalties enacted by the British statute *8vo Annæ*, if the directions of that statute are not observed, are only intended to enforce obedience to the law, and payment of the public duties; and therefore many different laws have been made, to put it in the power of parties who are liable to suffer by these penalties, to rectify their original omission, and, by payment of the duties, to receive the benefit of their indentures. Thus, with respect to the apprentice, remedies are provided by the statutes, the 18th of the King, c. 22. § 24, and 25. and 20th of the King, c. 45. On the other hand, for encouragement to the master still to pay the duties, though originally not paid according to the directions of the law, there is every session of Parliament a clause in an act, indemnifying such offences against the law. Accordingly, by an act passed in the session of Parliament 1755, it is provided, that where persons have neglected, in their indentures, the directions of the law, yet, if they shall still pay in the rates and duties on or before the 1st day of August 1755, the same indentures *shall be good, and available in law and equity, or may be given in evidence in any court whatever.*—Upon the faith of, and in conformity to this statute, the defender did, upon the 25th June 1755, pay the rates and duties chargeable upon the apprentice-fee in question, of which he obtained

No 8. a receipt from the stamp office, of that date, and the proper stamp upon the back of the indenture. And, from this state of the laws, it will admit of no question, that the indentures produced are as good and valid, to all intents and purposes, as if the apprentice-fee had been originally inserted at length in them, the duties paid, and the stamp obtained in terms of the original act of Parliament, or as if no such act had ever been made.

The statute makes no distinction, but makes a just and general provision in favour of the master, that all indentures so stamped before the 1st August, shall be held as good as if they had been originally stamped.—The purpose of these stamps is the collection of his Majesty's revenue, which ought equally to be encouraged and protected, whether the apprentice be dead or alive.—The nullity introduced is no intrinsic original nullity in the contract or indenture; and therefore it may be supplied after the death of the apprentice.—It only takes place ay and until the duties be collected, which may be as well after as before the death of the apprentice.

The act 8vo *Anna* does not speak of the *vellum* or *parchment* upon which indentures are wrote, but of the *paper* or *parchment*; and it is all one in the spirit and intendment of that statute, whether the original indenture, or an extract, which, in this country, is held equivalent, be stamped, as having paid the duty.

It is an agreed fact, that the onerous cause of these bills was for apprentice-fee; and as the indentures have become unquestionably as good as if originally stamped, by the express words of the statute, the pursuer has no ground to reduce these bills, upon pretence that the indentures are null.—The addition made to the extract can hurt no mortal, nor is there any ground for the alarm given by the pursuer, of the danger of allowing any addition to be made to extracts. Had the apprentice been alive, he would have profited by it, as well as the master, as the indentures were thereby rendered valid; and the only use and intention of the addition, was to certify to the stamp-master how much duty was to be paid.

Where the prestations undertaken by the master become impracticable, and the apprenticeship does only endure for a shorter space than the term of the indenture, without any fault or deficiency imputable to the master, there is no good reason why any part of the apprentice-fee should be abated.—All incumbent on the master, in return for the apprentice-fee, is, that he shall do his duty, while the apprentice remains with him. If he is cut off by the hand of God, the master suffers the loss as well as others, who have a concern with him.—If he should wilfully desert his service, the master does no more literally fulfil the terms of his engagement than in the former case: Yet it will not be pretended, that a parent, contracting an apprentice-fee with him, would, in this case, be entitled to refuse payment.—Upon the same principle it is, that if a master die in the middle of a term, the servant is entitled to his full wages; *l. 38. ff. Locat.*

‘THE LORDS adhered to the Lord Ordinary's interlocutor.’ (See WRIT.)

A&C. *Al. Gordon, jun.*

*Alt. Solicitor Garden.*

*Fol. Dic. v. 3. p. 32. Fac. Col. No 267. p. 498.*