

1775. July 13. JOHN GARDNER against SMITH and WARDROBE.

IN November 1771, an indenture was entered into between John Smith, for whom John Wardrobe was cautioner, on the one part, and John Gardner on the other part, whereby Smith became bound to Gardner as his apprentice in the art and trade of a wright, in Glasgow, for three years, and Gardner obliged himself to instruct him in that trade; but Smith having left his master about a year after the commencement of the apprenticeship, and the indenture containing a mutual penalty of five pounds; for that sum Gardner caused charge the apprentice and his cautioner.

Their objection to the validity of the indenture itself having been repelled, they set up another, in consequence of which the Lord Ordinary, before answer, allowed them a proof of the facts; and, upon considering the proof, pronounced an interlocutor, to which the Court adhered, on a reclaiming bill and answers:

“Repels the defence, That the charger having given up in a great measure his business of a wright, and betaken himself to the business of a smuggler, seldom attended his shop, and took no care to instruct his apprentice, in respect that it is proved, that although the charger, in consequence of his marriage with an illicit trader, did, for a time, engage in an illicit trade, yet the work in the shop was daily carried on by experienced journeymen; and that it is not proved that the apprentice was deprived of daily instruction by reason of the casual absence of his master.”

A. G. *Hay Campbell.*

Alt. Pat. *Murray.*

Clerk, *Tait.*

Fols. Dic. v. 3. p. 33. Wallace, No 179. p. 97.

* * * Here, there was no formal complaint entered, nor protest taken by the apprentice, before his desertion; which had great weight with the Court.

1776. March 8. MAXWELL against BUCHANAN.

AN indenture betwixt a master and an apprentice bore, That for each day the latter should absent himself without leave, he should pay a shilling, or two days service, at the master's option; and contained likewise a stipulation, that the master should pay the apprentice a certain sum weekly, in name of board. The apprentice was accused of theft by the master, and thrown into prison, having emitted a declaration before a Justice of Peace, confessing his guilt; but the theft being small, he was soon set at liberty, and offered to return to his service; taking protest, that if not received, he and his cautioners should be free of all the obligations of the indenture. The master refused to receive him, and brought action for the penalties, and for damage sustained from the indenture not being

No 9.

Deemed sufficient implement of the obligation on the matter to instruct his apprentice, while the master himself was casually absent, that the work was carried on by experienced journeymen

No 10.

An apprentice had been committed to prison, on an accusation of theft; had confessed, and had been liberated on bail. He offered to return to his service. His master found entitled to refuse; and to have right, from the apprentice and his caution-