

APPENDIX.

PART I.

APPRENTICE.

1776. *March 8.*

STEPHEN MAXWELL *against* ARCHIBALD BUCHANAN and Cautioners.

A SHORT account of this case is given No. 10. p. 593. The following is a more particular statement :

Besides the usual clauses contained in the indenture, betwixt Stephen Maxwell, coppersmith in Glasgow, and Archibald Buchanan, his apprentice, the following was inserted : “ And that while he, the said Archibald Buchanan, is “ in health, he shall not absent, desert, nor divert himself from his said service, “ by day or night, without liberty asked and obtained from his said master ; “ and that for each day he shall be absent therefrom, except in case of sickness, “ or liberty obtained, as said is, he shall either pay his said master one shilling “ Sterling, or else serve him two days for each of the said days, at the end of “ the said apprenticeship, in the said master’s option,” &c.—Mr. Maxwell also became bound to pay his apprentice a certain sum weekly, in place of board, washing, and lodging ; and both parties became bound to fulfil the terms of the indenture to each other, under the penalty of £10. Sterling.

Upon the 19th of April 1774, Mr. Maxwell accused his apprentice of stealing several articles from his shop, and he was in consequence of that accusation thrown into jail, and emitted a declaration before a Justice of Peace, confessing his guilt. As the theft was only of small value, he was soon thereafter liberated, upon finding bail to answer any complaint or indictment that might be exhibited against him at the instance of his master. After being thus liberated, the apprentice offered to return to his master’s service ; and, under form of instrument, protested, that if he was not received, he and his cautioners should be free of the indenture, and the whole obligations therein contained. Mr. Maxwell, however, instead of receiving the apprentice, brought an action upon the indenture, claiming the penalties therein stipulated, and the damages which he had suffered in consequence of the non-implement of the contract.

No. 1.

A master is not bound to take back an apprentice, after he had been imprisoned for theft, and after he had emitted a declaration of guilt before a Justice of Peace.

This amounts to such a breach of the indenture as to entitle the master to the different penalties under which its performance was sanctioned.

No. 1.

Before Lord Justice Clerk Ordinary, it was pleaded by the pursuer, that the declaration, emitted by the apprentice was sufficient evidence of his having been guilty of the crime of theft; and although his simple declaration, without any other conviction, might not have been sufficient to authorise the inflicting of a public punishment, yet it was sufficient to justify his master for not again receiving into his shop a person self-condemned of a most dangerous crime. Therefore, as the conduct of the apprentice had caused the breach in the contract, the pursuer was entitled to the different penalties stipulated.

To this it was answered by the apprentice and his cautioners, that the extrajudicial declaration founded on, could be no evidence of guilt. The apprentice did now deny that he had been guilty of any act of theft: The former declaration, incautiously and erroneously made, could not be sufficient evidence to convict him before any court. Therefore the pursuer was not entitled to conclude against him upon the supposition of guilt, as, if true, he had it in his power to ascertain the fact by complaint or indictment, neither of which had ever been attempted.

The Lord Ordinary “ found, That the defender, Archibald Buchanan, was “ guilty of a breach of his indenture, by the several acts of theft committed by “ him against his master, mentioned in his declaration and confession before “ the Justice of Peace, for which he was committed to prison upon the 19th “ April 1774; and found, that though he was liberated upon bail to stand “ trial, and no prosecution has hitherto been brought against him, yet the pur- “ suer, his master, was not bound to take him back to his service; and that the “ loss of his service arising therefrom to the master, was imputable to the ap- “ prentice; and therefore found him and his cautioners liable to the damages “ ascertained by the indenture, for each lawful day, from and after the 19th “ April 1774, to the expiry of the indenture, amounting, at the rate of one shil- “ ling Sterling per day, to the sum of £37. 4s. Sterling: But found, that from “ this sum must be deducted the expense of his maintenance, at the rate specified “ in the indenture, amounting to £23. 18s. 5d. Sterling, and decerned against “ the defender for the balance, and found no farther damages due to the pur- “ suer; and found the defender liable in the expense of this process.”

Both parties petitioned the Court against this interlocutor. The pursuer set forth, That as by a clause of the indenture, it was optional to him to receive from the apprentice either double service or one shilling for every day's absence, and as the first of these alternatives which he preferred could not be attained, in consequence of the apprentice having rendered himself, on account of his crime, incapable of performing it; therefore he was entitled to the full damage sustained, since he could not receive the penalties; and, at any rate, no deduction ought to be given out of the one shilling per day, on account of maintenance.

The defenders, on the other hand, besides resorting to the general argument, upon the effect of the declaration, as inferring no breach of the indenture, con-

tended that the two alternatives optional to the pursuer, must be considered as entirely equivalent to each other; therefore the pursuer could sustain no injury by receiving a shilling for every days absence agreeable to one of these alternatives, and if he had received double service instead of the other, there is no doubt but that he must have allowed the deduction for maintenance; consequently in the other alternative, as being of perfect equality with double service, he must likewise allow the deduction of maintenance, as decided by the Ordinary. At all events, as the pursuer had concluded in his libel for extravagant sums in name of damages, &c. which rendered it necessary for the defenders to appear in order to get them restricted, in which they had succeeded, it seemed inconsistent to find them liable in the expenses of process. The Court found, " That the defenders are not entitled to any deduction, on account of maintenance, from the one shilling for each day's absence for the said Arch. Buchanan from his master's service, as found due by the Ordinary's interlocutor, and, with this variation, adhered to the Lord Ordinary's interlocutors reclaimed against, and *quoad ultra* refused both petitions." &c. A petition for the defenders, reclaiming against this interlocutor, was refused without answers.

No. 1.

Lord Ordinary, *Justice-Clerk.*Act. *Cullen.*Alt. *Craig.*

D. C.

1807. November 27.

JOHN MACKAY, ALEXANDER MUNRO, and Others, *against* The JUSTICES OF PEACE in the County of ROSS.

MACKAY, Munro, and others, were apprentices to masons, shoe-makers, and other artificers in the town of Tain, in the county of Ross. In the month of February 1802, their names were reported as defaulters in performance of the statute labour of the preceding year; and a quorum of the Justices gave the following deliverance, (10th Feb. 1802.) " Having considered the written certificate and report, we do hereby grant warrant to constables to poind, in terms of law, the readiest goods and gear of the within named and designed persons deficient in the statute labour, for payment of the sums annexed to their respective names."

No. 3.
Apprentices to artificers in a town are liable in the performance of statute labour upon the high roads.

Of this threatened diligence the apprentices pursued a suspension, wherein the Lord Ordinary (Polkemmet) pronounced the following interlocutor, (21st May 1805.) " In respect that by our acts of Parliament the Justices have a discretionary power as to the description of parties to be called to perform statute work upon the roads, that no particular exemption is by the said act given to apprentices, and that it has been customary with other neighbouring counties, in similar circumstances as to roads with Ross-shire, for apprentices