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these being insufficient, it was necessary to bring her back to Leith for a thorough repair. Several of the emigrants now quitted the ship, and returned home. Hog with his family, in the mean time wintering in Shetland, and having remained there near a twelvemonth, wrote to Inglis to know his purpose as to proceeding; and having received from him an answer which he considered as a refusal, he and the remaining emigrants brought action against Inglis, before the Judge-Admiral, for restitution of the freight, and damages. The Judge-Admiral decerned for the freight, with interest; and for damages, which he modified to L. 10 Sterling.—*Pleaded* for the defender in a suspension, That although in ordinary cases no freight is due when the ship is disabled from performing her voyage, the present case was totally different, the first being paid before hand for necessary outfits, and being all *bona fide* expended and consumed for the benefit of the parties who paid it.—It was *urged* moreover for the defender, That the pursuer had misinterpreted his letter; that he never refused to accomplish the voyage, but had, on the contrary, got the vessel at last (though after a long time) completely refitted, and had intimated to the pursuer his readiness to proceed; and *lastly*, That the greatest part of the emigrants having changed their resolution of going abroad, no freight could be redemanded for them.—THE COURT, at first, found, That in respect the vessel was not totally disabled, and that Inglis had declined to perform the his contract after his return from Shetland to Leith, his representatives (he being dead) are bound to repeat the whole freight, without deduction of any of the price of the provisions consumed.—THE COURT thereafter ordered a condescendence of the alleged facts relative to the requisitions made by Hog on Inglis to proceed, and relative to the disposition of the emigrants and their families before Mr Inglis's offer; and on advising this condescendence, they adhered to their former judgment. See APPENDIX.

Fol. Dic. v. 4. p. 14.

1779. July 14. MARGARET BAIRD *against* LADY DON.

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When a servant is hired from one term to another, warning is required previous to the term, otherwise tacit relocation will take place; and in this case, where warn-

MARGARET BAIRD was hired as house-keeper by Lady Don for half a year, from Whitsunday to Martinmas 1777. At that term, she received her wages, and, without any previous warning, was dismissed; on which she brought an action against Lady Don, for payment of wages and board-wages for half a year from the term of her dismissal. In support of this claim,

Pleaded for the pursuer, When a servant is hired to a term, and no precise warning given, tacit relocation takes place, agreeably to the principles of common law, and the general practice of the country. The pursuer having received no warning, understood that she was to continue in the defender's service for the next half year after the term to which she was hired, and, on that ac-

count, did not look out for any other service. By this means she suffered the loss of which she now claims to be relieved by the defender, who was the cause of it.

Answered, When the parties to a contract have themselves fixed the period of its continuance, no intimation from the one to the other is necessary to prevent its being dissolved at the time stipulated. The parties are sufficiently ascertained of the endurance of their obligations to each other, by the express terms of their agreement.

If the servant is hired to a certain day, when the day comes, the prestations arising from the contract or agreement are no longer exigible. The servant is, *eo ipso*, free from performing the service, and the master from paying the hire. To renew these obligations, for the like, or any other space of time, a new agreement is necessary, specifying the term of endurance. Though the servant should remain in the service of his master after the time stipulated, he comes under no obligation thereby, without express paction, to continue in it for any definite time. The master, in like manner, is not obliged to keep the servant longer than he chuses.

It was likewise averred to be a common practice for servants to leave their masters at the term without giving warning, and for masters to dismiss their servants in the same manner.

THE COURT found the defender Lady Don, and Sir Alexander Don, conjunctly and severally, liable in payment to the pursuer of the sum of L. 5 Sterling of wages, and of L. 6 : 6s. Sterling in name of board-wages, and decerned.

Lord Ordinary, *Monboddo.* Alt. *Corbet.* Alt. *P. Murray.* Clerk, *Orme.*

Fol. Dic. v. 4. p 18. Fac. Col. No 75. p. 165.

1780. December 13.

WILLIAM MARSHAL *against* MESSRS CUNNINGHAM, DOUGAL, and COMPANY.

MESSRS Cunningham, Dougal, and Company, lent Mr Marshall L. 2000 Sterling upon a security over some subjects in Glasgow, and also a mortgage on an estate in the island of Tobago, the property of Mr Marshall; and, by the indenture or contract then entered into, Mr Marshall engages and binds himself, his heirs, &c. to ship on board such vessel or vessels belonging to the said Messrs Cunningham, Dougal, and Company, at Tobago, annually, the whole crop of sugar, rum, and other goods arising from the foresaid estate, to their address, and consigned to them, until the foresaid debts be completely extinguished, satisfied, and paid; as also, for that period, to send from Britain, by their vessels, the whole goods and provisions which he may have occasion for in that island; and to pay in to the said Messrs Cunningham, Dougal, and Company, their heirs, &c. the usual freight and commission therefor: And, in case the

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ing was omitted on the part of the master, the Lords found the servant entitled to wages and board-wages for the ensuing half year.

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A person having become bound to transport the whole produce of his West India estate, in ships belonging to his creditors, till their debts were paid, or to pay freight and commission, as if he had done so; the