

is elapsed, to continue prisoner aye and until the fines be paid ; and accordingly he is incarcerated.

Of this sentence he presents a bill of suspension, containing a charge to set at liberty, on thir reasons, That he compeared and craved a double of the libel, with the names of the witnesses to be adduced against him, and a procurator to plead for him ; all which was denied, as not the practice of thir summary courts ; though it is both *juris naturalis et positivi* to allow a sight of the process, and a time to answer. *Secundo*, He offered to exculpate and prove, that Hutcheson's man was *versans in illicito*, and the aggressor ; and objected against his witnesses, as being domestic servants : and yet all this was repelled. *Tertio*, The highest fine that can be imposed for such riots is £50 Scots ; which they had most exorbitantly exceeded. All which he was able to prove by an extract of the process, which the clerk refused him, as being a party concerned in the fine, unless he would pay him two guineas ; on which extortion he took instruments.

ANSWERED,---The present question was not here to discuss the justice or injustice of the decreet, which they would sufficiently vindicate in due time, and show it was a most atrocious riot ; but only whether he should be set at liberty, and the suspension passed ; and there being now no Privy Council in North Britain, the hands of the Justices of Peace, in punishing riots for disturbing the public peace, ought not to be weakened ; and they are content the suspension should pass, on consignment of the sums decerned for.

The Lords were sensible the fines were too exorbitant, and that it was not easy for a poor man to command so much money for consigning ; and so, they having exceeded their power, they passed the bill on caution, without putting him to consignment ; and, at discussing, it would appear who was in the wrong.

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1709. *June 21.* The Tutors of GEORGE ALISON's CHILDREN *against* ANNE LAURIE and ANDREW DINNET.

ANNE Laurie, relict of George Alison, merchant, enters into a transaction with Denoon, Blackader, and others of her children's tutors, to inventory the goods left by her husband in his shop, and then, at the sight of a bailie, to get them valued and appreciated ; which extended to £3866 Scots, at which rate she accepted the ware, and gave bond for the same, bearing this clause,---She always liferenting the said sum. After this, she marries Andrew Dinnet ; and he, being pursued for the price of the shop goods, ALLEGES his wife, by the writ founded on, must liferent it ; and so they cannot uplift it during her time.

ANSWERED,---However that clause was by surprise foisted in, yet it was contrary to law ; for it being her own children, who were minors, their money, neither could she warrantably reserve her liferent, nor they yield it, the same being an evident lesion to the poor infants.

REPLIED,---In contemplation of her reserved liferent, she had condescended to a most exorbitant price, far above the value of such old-fashioned ware. And as to such perishable goods, where there is great appearance of loss, tutors have been ever allowed to make rational bargains, otherwise none would buy from

them, if they lay under a perpetual insecurity of annulling such bargains ; and therefore the civil law refuses minors restitution in such cases,---*L. 7, sect. 8, D. de Minor.* And, with us, minors merchandizing are never reponed, unless there appear evident fraud ; because merchandize is like *jactus retis* ; and such is the uncertainty of loss or gain, that it is impossible to fix a certain standard.

The Lords found no lesion to the minors, unless their tutors proved that the goods were so far underrated, that, laying aside her liferent, the prices were so low as she could not but make considerable profit by them. For the Lords thought, that, if the prices are either above or equal to the true worth of the goods, it was but reasonable to give her the liferent, to encourage her to accept them at such a high and exorbitant rate.

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1709. *June 23.* ANDERSON of STOBGORSE and OTHERS *against* NINIAN HILL of LAMBHILL.

NINIAN Hill of Lambhill being pursued at the instance of Anderson of Stobcorse and Others, his creditors, in a roup and sale of his estate, they give in a petition to the Lords, representing, that the process cannot be so suddenly brought to a close ; and that there are some woods and shaws in the said lands ready for cutting, and, if delayed, will prejudice their after growth, and are, in the mean time, embezzled by the common debtor ; and therefore craved the Lords' warrant to the Bailie of the regality of Glasgow, and to David Stobo the factor, to visit the same, and expose it to roup, upon intimation, at the market-cross and six adjacent parish kirks, that the money may be depositate for the use and behoof of the creditors, and the woods may not decay and perish in the meantime.

ANSWERED for Lambhill and others of his Creditors concurring with him,— That this is a most irregular and unjust demand ; *1mo*, Because though the estate be put under sequestration, yet they have never, to this hour, proven him to be bankrupt, though it is two years since the raising of their summons ; and it were a strange preposterous method to dispose on his property till that be proven : And it is false and calumnious that he is cutting his timber. *2do*, This is not in the case of a *sylva cædua* fit for cutting ; in so far as it is not so many years since it was last cut, and it is far from being come to maturity ; and, though it were, yet the season of cutting for this year is past. But, *Stio*, This is no wood, but the planting contigue to and lying round about the mansion-house, which the Lords never allow to be cut down : for, when it comes to be sold, that vastation would considerably diminish the price ; and it being a beneficial decorement, a buyer will give so much more on that account.

Some of the Lords were for ordaining the bailie of the regality to visit the wood, and report the condition of it,---that it would decay if not timely cut. But the plurality refused the desire of the bill simply, in regard the estate was not yet proven to be bankrupt. However, it had been fit that the Lords had inhibited the common debtor to meddle with it, who commonly cut their planting short-hand, to get a little money. But this was not done.

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