

1749. February 10. EARL of MORTON *against* MUIRHEAD.

THE late Earl of Morton lent 5000 merks to Alexander Muirhead of Linhouse, grandfather and tutor in law to Alexander Muirhead, now of Linhouse, for which he got his bond, bearing that the sum was borrowed for paying a part of the price of the lands of Welheads purchased by the tutor at a public roup from the trustees of the Lord Torphichen, for the use and behoof of his pupil and grandchild.

In the process at the instance of the present Earl, against the then pupil, Alexander Muirhead, now of Linhouse, it was for him *alleged*, That as there was no evidence of the money being applied by the tutor towards the price of that purchase, so *zdo, Esto* it had been so employed, he could not be liable, as the money had been unprofitably borrowed, the tutor having at the time other money in his hand sufficient for that purpose; and a diligence was craved for instructing, that the tutor had before the purchase intromitted with funds sufficient to pay the price of the lands purchased by him.

But the LORDS were of opinion, That it is not necessary for the lender to maintain that the tutor had no other money to answer the purpose for which it was lent; that is what the creditor has nothing to do with, for whom it is enough to say, that the money lent was so applied; and the following circumstances were found sufficient to shew that the money was so applied, viz. The narrative of the bond, the sale tallying in point of time with the bond, the parties' admission that the price was paid, and the tutor's character for frugality; and therefore "they repelled the defence."

Fol. Dic. v. 4. p. 6. Kilkerran, (MINOR.) No 8. p. 350.

1770. November 17.

JEAN JOHNSTON *against* HUNTER JAMES FERRIER, SON of JAMES FERRIER,
Tacksman of Gorton Coal.

JAMES FERRIER HUNTER, a minor, with concurrence of his father as curator, raised a process of scandal and putting to silence against Jean Johnston; who, on the other hand, brought a declaration of marriage against him.

The Commissaries having allowed a proof to both parties, it was established, that the pursuer, who was a servant in the defender's father's house, and the defender had, in the month of June 1769, gone to Edinburgh together; and after meeting with some obstacles which both endeavoured to remove, had been married by a person who was said to be a minister, in presence of witnesses, and by interchanging marriage lines, which were produced and dated 15th June 1769. The parties were also seen in bed together towards

No 43.

A tutor purchased land for his pupil, and borrowed money to pay it, although he had sufficient funds in his hands belonging to the pupil. The pupil notwithstanding liable to the creditor.

No 44.

A male under the years of pupillarity, incapable of contracting marriage.