

they were not sufficiently provided *aliunde*, the husband had no damage, being bound in law to provide them; but it being proved that they were inhibited and provided, they found that the husband could not be liable; and that being not proved, they found that the ticket subscribed without solemnities was obligatory against the husband, seeing merchants who keep shops are not supposed to have witnesses who know that the particulars were delivered, which often is done by themselves only, having no servant present, and many times but women servants, or one at the most.

Gosford MS. p. 565. No. 884.

No 97.

1696. June 24. JOHN HENDERSON against JAMES LAFREIS.

LAUDERDALE reported John Henderson, merchant, against James Lafreis, writer; for payment of a sum contained in his bond. The reasons of suspension and reduction being coincident, were, that he was minor, and lesed, it being for merchant ware, not taken off for himself, (except a very few articles,) but for his wife's marriage cloaths, which Mr James Caithness, her father, ought to have paid. *Answered*, It was *in rem versum* to the minor, who was past twenty, and the court being no way exorbitant, and the furnishing being to his wife, and the bond granted since his marriage, he can no ways pretend to be lesed; for though her father should have paid her wedding cloaths, yet the charger would not have trusted him for a sixpence, he being then in prison for debt; and such furnishing to minors has been sustained, as appears by Dury, 5th Feb. 1631, *Inglis contra Sharp, voce MINOR*. THE LORDS repelled the reason, and found him liable, even for what was furnished to his wife, because being a moveable debt, *jure mariti* it became his, especially the bond being after the marriage. See the 10th of July 1672, *Neilson contra Guthrie*, No. 94. p. 5878.

No 98.

A minor found liable for his wife's wedding cloaths, bought by himself.

1697. Nov. 11.—JOHN HENDERSON having charged James Lafreis writer, (as mentioned June 24. 1696), for payment of the sum of                      contained in his bond; his reason of suspension and reduction was, minority and lesion. *Answered*, *In rem versum*, being for your marriage cloaths. *Replied*, The account is likewise made up of sundry articles furnished to his wife before the marriage, and to Mr James Caithness, her father. THE LORDS found *quoad* what was given off to her father, he was lesed, and ought to be reponed against the same; but what was given to his wife, though prior to the marriage, yet would fall *sub communiōe bonorum mobilium*, and make him liable *jure mariti*, unless they had followed her father's faith in the furnishing. See July 10. 1672, *Neilson contra Guthrie*, No. 94. p. 5878. Then the charger *alleged*, That Lafreis being a writer and attendant about the Session the time he gave

No 98.

this bond, though then a minor, he cannot crave the benefit of reposition; and it has been so decided in the Parliament of Paris, and elsewhere. *Answered*, That if an advocate (which is more than a writer) should *ex errore facti* give bond, or enter into any other transaction to his prejudice, when minor, he will be restored; and this benefit is only denied him when he errs *in jure*; and so *Pirezius* determines it *ad tit. cod. Qui et adversus quos in integr.* and in the decision 7th December 1666, between Fairholme and Sir George M'Kenzie, *voce* MINOR, he, though then a student of law, was reponed against a bond wherein he had signed cautioner, in his minority, for his father; but the ground there was, that his father could not legally authorize him *in rem suam*. THE LORDS found Lafreis's being in a writer's chamber did not exclude his reason on minority and lesion; but the LORDS ordained the charger to depone that the articles of the account were at the common usual rates, and not exorbitant.

*Fol. Dic. v. i. p. 393. Fountainhall, v. i. p. 723. & 792.*

1711. July 19.

The Lady KINFAUNS and LYON of Auchterhouse, *against* The Laird of KINFAUNS, her Husband.

No 99.

A lady being advised by her physicians to go to the baths in England for her health, her husband procured declarations from other physicians that medicine used at home might as probably recover her.

He was required by instrument to furnish her with money for her journey, but having refused to do so, she borrowed the money and granted bond for it. Found that the bond was null, as

MISTAKES falling in betwixt Charteris *alias* Carnegy of Kinfauns, and his Lady, daughter to Carnegy of Phineven; and she falling tender, took the advice of some physicians, who declared her distemper had a tendency to a palsy, and that it was fit she go to the warm baths in England, or to the waters of Aix-la-Chapelle in Germany. This being signified to her husband, he consulted other physicians, who attested the use of medicines at home might as probably recover her, and so refused to comply with her going abroad. Upon which diversity of opinions, he is required by way of instrument to furnish money for her journey; and on his declining it, Phineven her brother, and Auchterhouse, who married her sister, advance her 2000 merks to carry her on her journey, and take her bond for it; and thereupon intent a process against the husband for paying that money, so profitably advanced, and likewise for an aliment in time coming: And *primo loco* insisted for the 2000 merks. *Alleged* for Kinfauns, the husband, the bond is null, granted by a wife *vestita viro*. Next, though a man is *jure naturæ* bound to aliment his wife; yet, if she causelessly desert and withdraw, his obligation ceases; which she has done these twelve months bygone, taking up her residence with her brother and brother-in-law, and then going not to the baths, but to London, contrary to the advice of Dr Pitcairn and others the best physicians; and all this done only by bad influence and counsel, without the least provocation or *sævitia*, libelled against the husband toward her. And this may be *pessimi exempli* to allow wives to borrow