

No 7. true cause, which being confessed as said is, the letters were suspended *simpliciter*.

*Fol. Dic. v. 2. p. 20. Haddington, MS. No 2664.*

No 8.

1624. July 24.

ROSSIE against Her CURATORS.

SUSPENSION of a registered bond of 200 merks of principal, and L. 40 of expenses: *Ratio*, no money received, nor good deed, and the man suspender who is cautioner, and the woman is principal, being to marry together, as now they are married, the charger, at the least his father to whose behoof the bond was made, being curator to the woman, would not deliver the woman's evidents till he got this bond, which was no just cause of the bond, and so the bond is given *ob instrumenta deposita reddenda*, which is a shameful cause; and refers this to their oaths, father and son.

Find the reason relevant, and grant letters to warn them to give their oaths.

Clerk, *Durie*.

*Fol. Dic. v. 2. p. 20. Nicolson, MS. No 560. p. 387.*

No 9.

A tutor in law having by the advice of friends, granted a factory to the pupil's mother, who on that account gave him a bond for a considerable sum, the Lords found this an unlawful transaction; for a tutor, though he may grant a factory, ought to make no profit to himself upon any engagements he enters into for behoof of the pupil.

1639. February 27.

MUSHET against Dog.

ONE Mushet being served tutor lawful to his brother's bairns, transacts with Elizabeth Dog, mother to the bairns, and she obtains a factory from him, for which she by the meditation of some friends, obliges her by bond to pay him 3000 merks, which the said friends appointed her to pay; upon the which bond she being charged, suspends, that it was given *ob turpem causam*, viz. for selling of his office of tutory, or for granting of a factory, which is equivalent, the factory being made for sums paid therefor, and which must tend to the prejudice of the bairns, and therefore such pactions ought not to be allowed in judgment, but are reprobate in law; and although the consent of friends was obtained to the said paction, yet that ought not to give warrant to a paction not warrantable in law; especially seeing *rebus integris* the suspender renounces the factory, and is content to reponne the charger to the same, and to his own administration. And the charger *answering*, that it is not now time to offer to reponne, after so long a time, there being more than two years and a half, since the date of his tutory, and where this bond proceeds upon decret arbitral, done by friends, mutually chosen betwixt the parties, and being done by a woman, who then was *major sciens prudens præsens et volens*, and upon her own earnest dealing, there neither being violence nor fraud used against her for doing thereof; for albeit the office of tutory may not be sold, yet there is no reason nor law, which prohibits a tutor to make a factory, and to transact