

No 68. moveable subjects; and, therefore, reduced the bond and assignation, and decret following thereon, in so far as the same are prejudicial to the pursuer's relief of the defunct's moveable debts."

But the LORDS took up the matter upon the first point; and

" Found, That the deed in question was a deed *inter vivos*, made by a minor, without consent of his curators; and, therefore, void and null."

Act. *Jo. Dalrymple, Lockhart.*

Alt. *And. Pringle, Brown, Ferguson.*

J. D.

Fol. Dic. v. 4. p. 4. Fac. Col. No 66. p. III.

S E C T. IV.

What a Minor cannot do even with consent of his Curators.

1623. February 8. SALTCOATS *against* The JUSTICE-CLERK.

No 69.

A minor cannot discharge a bond, even with consent of curators, without payment made.

SALTCOATS being bound as cautioner to the Justice-Clerk, to infest Mr William Kellie in lands redeemable upon 3000 merks, and to pay the principal upon requisition, charged the Justice-Clerk to relieve him of his cautionry. The Justice-Clerk suspended, upon an acquittance made by his daughter, (who was assignee to Mr William Kellie), authorised by himself as lawful administrator to her. Saltcoats *alleged*, That in effect the offer was, that the Justice-Clerk should discharge himself, and that the daughter might revoke the discharge, and annul the acquittance given to the cautioner, without payment. In respect whereof, the LORDS found not the discharge sufficient.

Fol. Dic. v. 1. p. 577. Haddington, MS. No 2753.

No 70.

A discharge, granted by a minor, without an one-rous cause, was found null, although she might have disposed the sum in testament.

1626. July 25. LOCKHART *against* LOCKHART.

ONE Marion Lockhart having given discharge to Lockhart of Bar of a sum of money, wherein the father of the said Lockhart of Bar was obliged to the said Marion; the said Marion pursues an action of restitution *in integrum* against the said discharge, by reason the same was done in her minority, having neither received money nor other good deed; which action was sustained, notwithstanding the defender *alleged*, that this action could not be sustained, except the pursuer would allege, that the said discharge was given by her *sub*

spe numerandæ pecuniæ, which followed not, or that the defender promised her payment, and hath not done the same, without which the action ought not to be sustained; for, as a minor, past twelve years of age, might make a testament, so also she might lawfully at that age dispoñe upon that sum, or discharge it. This allegiance was repelled, and the reason found relevant.

Fol. Dic. v. I. p. 577. Durie, p. 227.

No 70.

1633. December. Sir JOHN SEATON against Sir JOHN HEPBURN.

By contract of marriage between Sir Robert Hepburn's son and Sir John Seaton's daughter, Sir Robert was bound to possess his son with 20 chalders of victual for his maintenance. Sir John having charged Sir Robert for fulfilling of this part of the contract, he suspended, upon this reason, that his son had discharged him of four chalders of the twenty, and had obliged him to content himself with sixteen. *Answered*, This bond being but a private deed and paction, *contra publicam tabularum nuptialium fidem*, was null, and ought not to be respected, as being *contra bonos mores*, especially it being given upon the day of the contract, which the youth was induced to do *amoris ardore*, and least the contract should have been dissolved.—THE LORDS found this allegiance against the reason of suspension relevant.

No 71.
Although a minor cannot discharge a debt gratuitously, yet a promise to grant such a discharge was sustained.

1634. January 15.—Afterwards the suspender offered to prove, that his son long after the marriage, came to him willingly, and promised to abide by the former condition he had tied himself to. *Answered*, He was yet minor, and revoked presently any such promise made in prejudice of the contract of marriage, especially there having nothing followed thereupon, but being *nudum pactum*. Next, his promise could not prejudge his father-in-law Sir John to seek implement of the condition, he being a contractor. *Replied*, He was *majoritati proximus*, and could not revoke a promise made in favour of his own father. Next, he prejudged none but himself during his own time; for, if he died before his wife, his promise could not bind her, but her father might seek implement of the whole in her behalf.—THE LORDS found this part of the reason of suspension relevant to be proven by his oath.

Fol. Dic. v. I. p. 577. Spottiswood, (MARRIAGE.) p. 205.

1666. December 7. Sir GEORGE M'KENZIE against FAIRHOLM.

SIR GEORGE M'KENZIE, advocate, pursues a reduction of a bond granted by him as cautioner for his father, (the bond is now assigned to John Fairholm), on these reasons, 1st, That the bond is null, as being done by a minor, being in his father's family, and not being authorised by his father as lawful adminis-

No 72.
A bond of caution was reduced, for this reason only, that it