

1639. *January 30.*BELL *against* WILSON.

ONE Bell having charged Wilson for payment of a sum, contained in his obligation, who suspending, that the bond was null, he at the subscribing thereof being minor, and having curators, who has not consented thereto; which being received, and found relevant by way of suspension, he produced his act of curatory, and desired a day to prove his minority. And the charger *alleging*, that the act of curatory contained in the body thereof, that the minor was at that time of the chusing of his curators past sixteen years complete, whereby the time of the date of the bond, it appears clearly he was more than major; and the other *answering*, that notwithstanding of that assertion, which if he made it, he was then also minor, and could not know his age, and was it not pertinent to the judge and clerk to insert any such narration in an act of curatory, that yet he might be heard to prove *veritatem rei*, and that he was minor the time when the bond was subscribed; the LORDS repelled this *allegance*, and found that the minority might be proved, notwithstanding of the assertion contained in the act of curatory, which if it had been true, he would have been major when the bond was subscribed; and the said declaration contained in the act was not respected.

Durie, p. 372.

No 58.
Found that minority might be proved, altho' from the terms of the act of curatory, the party, by calculation of time, would have been major.

1639. *March 23.* STUART *against* STUART and HUME.

GEORGE STUART having furnished some money to Christian Stuart, daughter to John Stuart of Coldinghame, and having received her bond thereupon, and registrate the same, arrests in the hands of Hume of Rentoun, the money adebted by him to the said Christian, to be made forthcoming for payment of the said debt, and pursues therefor; wherein the said Christian compears, and *alleges* the said bond to be null, because it was made by her, she then being *in familia paterna*, and the same is not authorised with his consent, who is her curator in law. And it being *replied*, that seeing she is now past *annos utiles*, and had never quarrelled this bond by action of reduction, or restitution, that the exception ought not to be respected, especially seeing this bond was granted by her, when her father was not within the country. THE LORDS found, that before they would decide this question, that the party ought to qualify for what cause the bond was given, for if it was granted for necessary furnishing, and at the time when the father was not in the country, it were no reason that the party in such a case should be deprived of his just debt, and therefore superceded to discuss the *allegance*, while the pursuer should condescend upon the cause of the debt, that the LORDS might consider thereof.

Fol. Dic. v. 1. p. 576. Durie, p. 886.

No 59.
A bond granted by a minor for necessaries, without her father's consent, was sustained.