

No 60.

Found in conformity with M'Adam against Lag, No 49. p. 8938.

1672. February 24.

CORSER against DEANS.

BARBARA CORSER as executrix to her husband, pursues George Deans notary for payment of bond of 137 pounds granted to the defunct, who *alleged* absolvitor, because the bond is null, being granted by him when a minor, and his father on life, without his consent, who as lawful administrator was curator to him, which was found in the case of Mackenzie against Fairholm, No 72. p. 8959. It was *answered*, that the defender was not then *in familia paterna*, but was a notary and messenger acting for himself several years. *2do*, The bond bears, that the sum was advanced for making him notary and messenger, which being so profitably employed, he is liable as *lucratus* thereby, which is effectual against any minor. It was *replied*, that the father remains as curator, whether his son continue in his family or not, in the same way as other minors, though not in the family of their curators, yet cannot act without their consent; neither does a minor's skill as notary or messenger take away the hazard of his levity in managing affairs; neither can the minor's assertion in the bond prove that the money was employed to make him notary or messenger; for *eadem facilitate*, that minors may be induced to borrow money unprofitably, they may be induced to declare what is not truth; and though this bond were null, the pursuer may pursue for any thing profitably employed for the minor, but not on this bond.

THE LORDS sustained the allegiance to validate the bond, that the sum was employed to make the defender notary and messenger, but found that it was not proven by the acknowledgment of the bond, but that it might be proven *prout de jure*. See PROOF.

Fol. Dic. v. 1. p. 576. Stair, v. 2. p. 78.

No 61.

The Lords sustained a minor's breaking his father's tailzie, and paying his debts, as rational acts, notwithstanding the minority, and though he did not adhibit thereto the consent of his curators.

1677. December 15.

NICOLSON against NICOLSONS.

UMQUHILE Sir Thomas Nicolson, the King's Advocate, by his bond ordered his affairs on this manner: ' That if the child in his lady's belly be a male-child, he should be his heir, and he resolved to make him his executor and universal legatar, so that failing the said male child by decease, without heirs procreate of his own body, his sisters-german would be his heirs and executors, and exclude his sisters by the father's side, the said Sir Thomas, his daughters of the first marriage; and seeing his daughters of the second marriage are sufficiently provided to 40,000 merks by their mother's contract, ' Therefore he the said Sir Thomas did ordain and appoint, and did oblige him the said male-child, and his heirs and executors whatsoever, not being of his own body, in case the said male child decease without heirs of his own body, ' to dispone, assign, and transfer all his estate heritable and moveable, in favours of his daughters of the first marriage. Likeas *de presenti* he doth assign