

1678. *January 9.*SIR WILLIAM HAMILTON of Preston *against* The LAIRD of LAMINGTON.

LAMINGTON suspends a bond on this reason, That it was granted by him, having creditors, without their consent.—*Answered*, He was not lesed, for it was for an onerous cause, a debt of his goodsir's, to whom he is now served heir.—*Replied*, He needs not say lesion, when the deed is *ipso jure* null ; *2do*, He was not then served heir, and so they had no ready execution.—THE LORDS found a minor, having creditors, might validly grant a bond without their consent, when he was not lesed ; but assoilzied him from all annualrents of the land preceding his service ; but the reason was, because the service here was not for many years after the grandfather's death.

Fol. Dic. v. 1. p. 576. Fountainball, MS.

1680. *November 30.* STEVENSON *against* ALLANS.

UMQUHILE — Allan having nominated William Stevenson his executor and universal legatar, he obtained decret for a sum belonging to the defunct. Two Allans, the defunct's cousins-german, raise reduction of the testament and decret upon this reason, That the nomination was by a minor, in favour of his own curator, who could not authorise him, and who was his step-father and master ; and the minor having lain sick a fortnight, none of his relations were acquainted therewith ; likeas he had also formerly nominated his nearest relations his executors and legatars, and therefore this testament had been unwarrantably elicited ; likeas the defunct died a few hours after he signed the same ; and albeit minors having curators might test without their consent, yet not in such circumstances as these ; therefore most of the neighbouring nations have restricted the power of testing to 18 years of age ; and if this be authorised, the portions of children, which are oft times wholly testable, may be carried away from their relations in favour of strangers, or any who happens to be about them the time of their death ; and by the Roman law, heirs nominated were excluded, if it proceeded upon suggestion ; and more must be presumed in this case, where the defunct had formerly preferred his friends.—It was *answered*, That none of all these grounds are relevant to reduce a testament, neither can any thing less than an act of Parliament restrict the power of testing after pupillarity ; nor is there any reason for such a law in Scotland, where testing is so restricted by law, that it can reach no heritable rights, and that it can neither exclude the wife nor bairns' share ; and though the Romans, who were zealous to have the power of testing to extend to the whole estate, excluded suggestion, and made many restrictions, yet our restrictions are more than them all ; and if upon such pretences testaments could be reduced, then the nomination of wives, parents, children, and brothers, who all may have greater

No 62.

Found in conformity with Macadam against Lag, No 49. p. 893^s.

No 63.

A minor having curators, may test without their consent, and may nominate his own curators to be his executors.