

away by the deposition of the communiors now after the cedent's decease. THE LORDS assoilzied from the reason of reduction, unless that they would prove, that the assignee was *particeps fraudis*, or refer the verity thereof to his oath.

No 261.

*Fol. Dic. v. 2. p. 233. Gosford, MS. No 430. p. 222.*

1681. January 5. BORTHWICK against YOUNG.

A REDUCTION of a bond on minority and lesion. *Answered*, It was for the balance of an account, and *in re mercatoria*, minority is not respected for the benefit of commerce. This the LORDS repelled, because the suspender was but a cautioner, and was not a merchant granting bond for his own traffic. Then *answered, 2do*, Offered to prove by the witnesses, *omni exceptione majores*, inserted in the bond, he affirmed himself to be major, and so could not be restored, C. L. 3. T. 43. *Si minor se majorem dixerit*. THE LORDS found this affirmation was not probable by witnesses, but only *scripto vel juramento* of the minor, because it might be of dangerous preparative if the sum were great; *2do*, That a promise is not probable *per testes* being *nuda emissio verborum*; *3tio*, That then the oath of a minor, swearing he was major, might be so proved; *4to*, They had a remedy by inserting the affirmation in the bond, which being omitted, *sibi imputet*.

No 262.  
What proof  
that a party  
affirmed him-  
self major?

*Fol. Dic. v. 2. p. 234. Fountainhall, MS.*

\*.\* Durie reports a similar case, 28th February 1637, Wemyss against ———, No 156. p. 9025, *voce* MINOR.

1683. February. GRANT of Kirdels against WILLIAM GRANT.

No 263.

In a declarator of expiration of the legal of an apprising, it was *alleged* for the defender, That the pursuer had intromitted with the mails and duties of the appraised lands, equivalent to the sums appraised for, while he had both an assignation to the apprising, and a wadset right in his person; and apprehending, that his intromissions would be ascribed to the apprising, and not to the wadset, he, after expiring of the apprising, gave back the old assignation, and took a new right posterior to the intromission; and this was offered to be proved by famous witnesses.

THE LORDS, in respect the allegiance was fraud, allowed the witnesses to be examined *ex officio*, albeit the pursuer contended it was only probable *scripto vel juramento*.

*Fol. Dic. v. 2. p. 233. Harcarse, (COMPRISINGS.) No 286. p. 67.*