but thought, that as the administrator was abroad, they might interpose and directly authorise, and they would no more become cautioners than they do in any case, which frequently happens, of money's being re-employed at the sight of the Ordinary: That in this case, there was little reason to doubt the new security offered, as the liferentrix was so much satisfied with it; mean time, to remove all scruple, it might be remitted to the Ordinary to make further enquiry and to report.

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Which accordingly was done; and thereafter, upon the Ordinary's report, the LORDS "authorised the payment of the money and acceptance of the new security offered."

This was by some said to be what the Court could not refuse, as the administrator was abroad, and the money in effect *in manu curiæ* by the offered consignation; adding, that it were well that the Court had the same, or at least part of the powers the Chancellor has in England of seeing to the application of minors' money.

Fol. Dic. v. 4. p. 6. Kilkerran, (MINOR.) *No 7. p.* 348.

*** D. Falconer reports this case:

December 11.—MORISON of Craigleith owed, by heritable bond, L. 1000 Sterling to the late Lord Royston, which coming by progress into the person of John Stuart my Lord's grandson, the debtor made a tender of the money, and thereupon offered a bill of suspension.

Answered for John Stewart; That he was willing to receive the money, and had provided a security to employ it on; but he being minor, and John Stewart his father and administrator in law out of the country, it was necessary he should be authorised by the Court to discharge.

The suspension being discussed upon the bill, two methods were proposed, 1*mo*, That the Lords should appoint a curator *ad effectum.* To which it was *answered,* That it could not be done while he had an administrator in law. 2*do*, That they should themselves authorise him. To which it was *objected,* That they then behoved to consider the security proposed.

THE LORDS remitted to the Ordinary to consider the security, and on report authorised the minor to receive and discharge the money, and to lend it out again thereon.

Susp. *Boswell.* Alt. *D. Grame.*

D. Falconer, v. 1. *No* 222. *p.* 306.

1749. *February* 22.

JEAN HAY, Spouse to HOME, and their CHILDREN, *against* GRANT.

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The Court appointed a *curator bonis.*

THOMAS GRANT purchased the lands of Blackburn from Alexander Home, the price whereof he paid, except 12,000 merks, which he retained to answer a

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and authorised him to uplift and discharge, with instructions to re-employ.

liferent of 600 merks secured on the land to Helen Spence, relict of the former proprietor; for which sum he gave bond payable at the first term after the decease of the said Helen Spence, to Jean Hay wife to the disponer, during the joint lives of her and her husband, and that for the aliment of herself and children (the said disponer thereby renouncing all right or interest in the said 12,000 merks, and particularly his right as administrator in law to his children) and after his decease for her own liferent use, and in fee to the children equally among them.

Upon the death of Helen Spence, Thomas Grant proposed to pay the money; but the question was, How he was to be discharged? Jean Hay was willing to grant discharge for her interest, and, if it could be of any use, the husband was willing to concur, such of the children also as were past majority were willing to discharge; but the difficulty lay in this, that some of the children were within pupillarity, others of them were past pupillarity, but within majority, and had no curators, and could find none willing to accept.

In this situation, Thomas Grant presented a bill of suspension, in order to his safe payment. And it being *alleged* for the chargers, That a discharge by a minor, not having curators, is a sufficient exoneration to the debtor, and which the minor children were willing to grant, and for such of them as were within pupillarity, it being craved, that a factor might be named, with power to discharge their interest, the Ordinary found, "That the presenter of the bill was not bound to accept of a discharge from such as are past pupillarity, and within majority, not having curators, and refused to name a factor for those who were within pupillarity," as what was more proper to be obtained upon application to the Lords.

The case being laid before the Lords by the relict and whole children, for such authority as might be proper to enable them to discharge, to prevent a loss by consignation, some seemed to think, that where one is past pupillarity, and has not curators, he may discharge; which point the Lords avoided determining, but generally agreed in this, that no cautious debtor would venture to pay a minor without curators, otherwise than *auctore prætore*.

The next question was, How a curator could be authorised for a minor? And, in general, it is what the Lords never do; but here the case was special, a part of the money belonged to a pupil; and as the whole money was liferented, it could not be divided; it was therefore thought, the Court might appoint a *curator bonis* for the whole minor children.

And accordingly the LORDS "authorised a *curator bonis* with power to discharge, he finding caution;" but with this quality, "That he re-employ the money in the same terms as devised by the bond at the sight of the Ordinary on the bills."

Fol. Dic. v. 4. *p.* 4. *Kilkerran*, (MINOR.) *No* 10. *p.* 351.