

because that is granted only to minors that are circumvened through facility, and know not what they do ; whereas the pursuer was a notary, and drew the contract with his own hand, and besides not far from majority ; likeas, since his majority he had homologated the same, by payment of the said annualrent.—*Replied*, His quality of notary will not make him lose the benefit competent to minors. As to his homologation, it is only probable *scripto vel juramento partis*. —THE LORDS, considering the quality of the pursuer, that he was a public notary the time of the subscribing the contract libelled, and was the drawer of it himself, sustained the last part of the allegiance, bearing the pursuer to have homologated the contract, by payment of annualrent since his majority, to be proved *prout de jure*, notwithstanding it was to fortify a contract reducible by law, whereby a minor had disposed his heritage.

Spottiswood, (MINORS and PUPILS.) p. 214.

* * Durie reports this case :

1636. *July 19.*—UMQUHILE WILLIAM GAIRDNER being addebted to Chalmers in the sum of 600 merks by his bond, whereupon John Gairdner being decerned as lawfully charged to pay, &c. and being charged, and for obedience thereof having given a new bond to the creditor, upon which he being charged, he suspends, and intented reduction upon this reason, *viz.* his minority when he subscribed the last bond ; whereto it being *answered* by the charger, That he could neither suspend nor reduce upon that reason of minority, seeing the time when he subscribed the bond he was a notary, which being a public charge, presumes majority ; and in fortification thereof, he offered to prove that since he was major, he paid annualrent for this same sum to the charger.—These exceptions, *conjunctim* were found relevant, and the payment was found probable by witnesses, albeit the suspender and reducer *alleged*, That it was only probable by writ or oath of party, tending to make a null bond good, which was alike as if he were to prove the debt by witnesses ; which the LORDS repelled, and found the same probable by witnesses, as said is, it being conjoined, that the bond was made by a notary.

Act. Gibson.

Alt. Heriot.

Durie, p. 818.

1637. *February 27.* WEMYSS against CREDITORS.

UMQUHILE Mr John Wemyss minister, and his son John Wemyss as cautioner for him, being obliged to diverse persons in certain sums of money, the son convened all these creditors, to hear and see him restored *super capite minoritatis et lesionis* ; and some of the creditors defending, *alleged*, That the pursuer could not quarrel the bonds given to them, because at the time of the subscribing of

No 155.
written by himself, which it was alleged he had homologated, by payment of annualrent after majority, and this last fact was allowed to be proved *prout de jure*.

No 156.
An allegation, that a minor affirmed himself to be major at the time of granting a bond, is a relevant de-

No 156.

fence against
him pursuing
a reduction
of that bond,
*ex capite mi-
noritatis et
lesionis.*

the bonds the said pursuer confest and affirmed himself to be major; and as the law provides that minors should be reponed, so the law provides that minors should not deceive majors, *quia jura minoribus deceptis non decipientibus subveniunt.*— THE LORDS found this exception relevent for these bonds, seeing the pursuer replied upon no fraud nor circumvention upon the defender's part, whereby they induced him to make that confession; but found the allegiance ought only to be proved by oath of the pursuer, or by writ, and not by witnesses. And it being *alleged* by some other defenders for their bonds, That at the subscribing thereof, the pursuer swore that he was then major; this was also found relevant to sustain these bonds to be sicklike proved *scripto vel juramento*, and no otherways. And other defenders *alleging*, That the pursuer promised never to revoke these bonds granted to them; this allegiance was repelled; for as he had wronged himself in the act of subscribing these bonds, against which the law restored him; so of like reason he ought to be restored against that naked promise, neither being judicially made, nor sworn in judgment, nor out of judgment. *Item*, Some others of the defenders *alleging*, That their bonds were granted upon monies furnished to the pursuer *quæ erant in rem ejus versæ*, in so far as they offered to prove, that they were given to his merchant from whom he bought stuffs, which were employed to be bridal cloaths to him, and which were worn by him at his marriage, and kept thereafter in his possession; this allegiance was also found relevant to elide the restitution craved against these bonds. And lastly, some others of the creditors *alleging* these bonds were made for cloaths, meat and drink, necessarily furnished by these creditors to this pursuer's brethren and sisters, and which they did at his special command and direction, and without which direction, they would never have made this furnishing; this allegiance was repelled, because the direction being given, (if any had been which was not granted) was given while his father lived, and the said furnishing also made during his lifetime, and the pursuer not being holden in law to furnish them, he cannot be convenable therefor; and notwithstanding of any alleged directing, the LORDS found he ought to be restored. See PROOF.

Act. Stuart.

Alt. Gilmore & Craig.

Clerk, Gibson.

Fol. Dic. v. 1. p. 585. Durie, p. 831.

1672. February 24.

CORSAR against DEANS.

No 157.

A BOND granted by a minor, without consent of his father, administrator, found null, though the minor was a notary and messenger, and, therefore, of presumed ability.

Fol. Dic. v. 1. p. 585. Stair.

* * * This case is No 60. p. 8944.