

of Highlanders and Islesmen, rebels, together with an intimation to be made to his procurators ; Jam. VI, Parl. —.

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1649. November 9. The CREDITORS of JOHN DAVIDSONE *against* JAMES HARRIS.

THERE being a certain sum of money deponed, the time of the sickness, in the hands of umquhile John Davidstone, by one Harris, in the Cannongate, the said John lent it out, as was alleged, to the Laird of Lugtone ; and the creditors of the said John pursuing his relict for exhibition of the bond, the said James Harris was admitted, for his interest, to seek delivery of the same to him, he proving *has fuisse ipsas species depositas*. Which the Lords did ; in favour of *depositum*, in such a perilous time.

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1649. November 17. LAIRD and LADY RENTONE *against* GEORGE STEWART.

IN the action of suspension and reduction at the Laird and Lady Rentone their instance against George Stewart, pursevant, the reason [was] That the bond given by the lady, while she was *in familia paterna*, without the consent of her father, as lawful administrator to her, should be null, as that bond which is given by a minor who had curators, if it be given without their consent. The Lords found it relevant, notwithstanding it was alleged, That the father's administration is not of that authority that a curator's is, since the curator is taken sworn *de fidei administratione*, and likewise sets caution. *Item*, That, by our practise and custom in matters of consequence, curators may be given *vivo patre* by them who gift any thing to a pupil or a minor, or to secure any bargain with a pupil or minor ; and also, if a father be to redeem his own gift from a minor : *et curatorem habenti curator non datur, nisi prior sit remotus* ; because *reipublicæ interest* that the king's dispositions and deeds of any part of the principality, during the prince his less age, as administrator, should stand good and lawful. And, to descend to private men, it is very usual that the father does things as lawfully and lovingly for his bairn as any curator can do ; and, as he will defend him from injury and wrong in body, so he will keep him from harm and skaith through deception and fraud in matters of subscribing bond or discharge : as is in *L. Cum furiosus 7 cod. de Cur. Fur. Quis enim talis affectus extraneus inveniatur ut vincat paternum ? Vel, cui alii credendum est res liberorum gubernandas, parentibus derelictis ? Et pater videtur a Deo tutor naturalis datus ; ab homine vero, testamentarius ; a lege, tutor legitimus ; et a patre patriæ, dativus. Nec datur restitutio in integrum contra patrem, propter debitam reverentiam.—L. 2, Cod. qui et adversus quos*. For the father gives a tutor testamentar, who is not obliged to find caution *de fidei administratione, secutus ejus fidem ut suam*. But it would be here provided against the father, who may be *prodigus* ; and suppose he be not so declared, that, in the case he contract so much debt that his estate be all

comprised from him ; the minor, in his adventitious goods, be not prejudged. *Item*, If a minor use trade or merchandise. *Item*, If the father be absent forth of the country, so that the minor's business cannot be expedie, &c. Neither think I this exception of nullity can be well received by way of suspension, as in some nullities is usual, being contained in a writ itself ; as, namely, where a husband and wife subscribe a bond for borrowed money ; because, in our case, it must abide probation, both of the father's life, the time of the minor's subscribing, and that he was minor then ; for that which the Romans called *senatus consultum Macedonianum* is of long last, *donec filiusfam. fuerit emancipatus et a patria potestate liberatus*.

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1649. *November 24 and 27.* The LAIRD of RENTONE *against* LADY AYTOUNE ; and RENIE and MAKANE *against* CUNINGHAME.

THERE was much dispute thir days *respectivè* : the 24th day, in the Laird of Rentone his process against the Lady Aytoune ; and on the 27th, in the process Renie and Makane against Cuninghame, for some chalders of salt : anent insisting upon process after litiscontestation, and proponing of exceptions to be verified instantly, after witnesses had been received, and probation renounced. But the Lords, as they thought the first dispute idle, so they would not, in the other, infringe nor loose the form of process, except the pursuer would agree thereto. Yet they gave liberty to propone their exception, by way of suspension, and to prove it as in a reduction, the same consisting *in factò*.

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1649. *November 27.* ROBERT RAE and ROBERT PORTEOUS *against* The EARL of MURRAY.

ROBERT Rae and Robert Porteous, pursuing the Earl of Murray upon his bond of 840 merks, for wainscot, dated in December 1643, not payable till February 1644 ;—there is a discharge, granted in January 1644, obtruded by the Earl ; which his servant, Mr David Stewart, purchases, bearing him to have paid 80 merks for 100 deals, which the granter confesses satisfied, and all other timber coft by the said Earl. But the Lords did not think that the word timber would comprehend the wainscot, but that the bond should specify discharged or redelivered, since it contained a great sum, and the sum contained in the discharge which was received was but very mean.

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1649. *November 27.* MARION WHYTE *against* HELEN MITCHALL.

In the suspension, Marion Whyte against Helen Mitchall, who had decreet