

No 30.

1662. February 7. Countess of BUCCLEUGH *against* Earl of TARRAS.

THE Countess of Buccleugh pursuing reduction of a contract of marriage betwixt her sister and the Earl of Tarras,

THE LORDS would not sustain incident for the Earl of Tarras, albeit he was minor, that contract being his own writ, and not his predecessor's.

Stair, v. 1. p. 93.

No 31.

A minor was not restored against a bond given for his father's debt, whom he did not represent, it being instructed that he swore to perform it.

1672. February 10. MR GEORGE WAUGH *against* BAILLIE of Dunragit.

MR GEORGE WAUGH pursues Baillie of Dunragit for payment of a sum due by his father, which he promised to pay with an oath. The defender *alleged* that he was minor the time of the promise, *et eadem facilitate* that he was induced to promise, he might be induced to swear; and therefore denying that he did swear, alleged that it was not relevant. It was *answered*, That the known authentic *sacramenta puberum sunt observanda*, have frequently been approved of by our custom, to hinder minors to reduce such deeds as were sworn, seeing they would have greater lesion by the perjury than the damage.

THE LORDS found the promise and oath relevant to be proved by the defender's oath or writ.

Fol. Dic. v. 1. p. 575. Stair, v. 2. p. 69.

* * * Gosford reports this case :

WAUGH having pursued Baillie for payment of a debt upon his promise, confirmed by an oath, it was *alleged*, That any promise made was during minority, and without the consent of his curators; that although he did swear to keep his promise, yet seeing the promise was null being the principal obligation, the oath, which was only accessory thereto, could not bind, as is clear by the civil law, *de sacramento puberum*, and many lawyers, writing upon that subject, who conclude that *juramentum addit majus vinculum sed non inducit obligationem*.

THE LORDS, notwithstanding, did find the defender liable, in respect of his oath, as was decided formerly, the minor being near majority the time of the promise and oath.

Gosford, MS. No 472. p. 245.