No 176.

a small sum, in respect that the suspender had not intented *debito tempore intra annos utiles* a summons of restitution *in integrum* to be reponed against the said bond, nor reduction upon the said revocation and minority; and found, that this reason of suspension upon that revocation, albeit done *debito tempore intra annos utiles*, interrupted not.

Act. ——. Alt. *Nairn*.

Fol. Dic. v. 1. *p.* 585. *Durie, p.* 539.

*** Auchinleck reports this case.

WILLIAM COCHRAN is bound with his father conjunctly to pay John Murray 40 merks, with the annualrent thereof, during the not-payment of the principal. The creditor pursues not the debtor while after his father's decease, and registrates the bond, and charges the defender. He suspends, and *alleges*, that he made revocation *intra annos utiles*. It was *replied*, that a reason of suspension, founded on a naked revocation without reduction, was not relevant.—THE LORDS, in respect of the meanness of the matter, and poverty of the party, sustained the reason of suspension, proving his minority.

Auchinleck, MS. p. 134.

No 177. Reduction of a decree against minors charged to enter heir sustained, though not raised *intra annos utiles*.

1661. *July* 17. RELICT of ROBERT FLEMING *against* FORRESTERS.

THE relict of Robert Fleming, Bailie of Edinburgh, as his executrix, charged Forresters, the Bailie's sister's daughters, to pay 1600 merks, due by their father, by bond, and decerned against them, as lawfully charged to enter heirs to him 19 years ago, and now eiked to the Bailie's testament by the charger, whereupon she obtained letters of horning summarily. The suspenders *alleged*, the letters ought to be suspended *simpliciter*, because they offered a renunciation to be heirs. The charger *answered*, *Non relevat post sententiam et tantum temporis intervallum*. The suspender *replied*, They were minors the time of the decreet, and that the delay of time was, because their uncle never insisted, and it was like, purposed not to insist. The charged *answered*, They were now majors, and did not reduce *intra annos utiles*.

THE LORDS admitted the renunciation.

Fol. Dic. v. 1. *p.* 586. *Stair, v.* 1. *p.* 52.

No 178. A reduction on minority and lesion was not sus-

1672. *January* 25. Sir JAMES RAMSAY *against* MAXWELL.

Sir JAMES RAMSAY having charged Maxwell of Carnsalloch upon a bond granted by him, he suspends and raises reduction; 1*mo*, Upon minority and le-

sion, and that he had revoked *intra annos utiles*, though he had not raised reduction; *2do*, That he had curators, and they not consenting; and produced an act of curatory, wherein five or six persons were nominated by him to be curators, conjunctly and severally *ad lites*, and conjunctly *ad negotia*, or at least three of them to be a quorum, and that two accepted, which was sufficient to authorise him.

No 178. tained, not being raised within the *anni utiles*, tho' the pursuer had revoked within that time.

THE LORDS repelled the first defence, there being no reduction raised *intra annos utiles*, and repelled the second reason, in respect of the tenor of the act of curatory; and found that thereby there could be no curators, unless three had accepted. *See* SOLIDUM ET PRO RATA.

Fol. Dic. v. 1. *p.* 586. *Stair, v.* 2. *p.* 55.

*** Gosford reports this case:

1672. *February* 25.—Sir James Ramsay having charged Carnsalloch upon a bond, wherein he was cautioner for Maxwell of Brackenside for the sum of 12,000 merks, he did suspend upon two reasons, *first*, That he was minor when he had subscribed, and had revoked *intra annos utiles*. To which it was *answered*, That a simple revocation was not sufficient unless he had intented a reduction and cited the charger, which was not done until 20 years after the revocation. This reason was repelled in respect of the answer, and it was found necessary that a reduction should have been raised *intra annos utiles*, to the effect the minor might have been restored *in integrum* by a decreet. The *second* reason was, that the suspender was minor *habens curatores*, who did not consent, therefore the bond was null *ipso jure*, for which an act of curatory was produced. It was *answered*, That it was clear by the act of curatory, that the suspender had nominated seven persons to be curators conjunctly, or any three of them to be a quorum, whereof Brackenside was another specially named, who were to be *sine quibus non*; but so it is, never did any accept but two, which not being a quorum, and having no power to administrate as curators, the act itself was void and null. *2do*, If it should be sustained, that the two accepting were empowered, then the principal in the bond, viz. Brackenside subscribing with Carnsalloch was equivalent to a consent.

THE LORDS did find, that the act of curatory being conceived as said is, was void and null, and the minor in that condition as if he had no curators, *quo casu*, he not having intented reduction *intra annos utiles*, the bond was obligatory. But as to the *second*, That Brackenside who was one of the consenting curators, had subscribed the bond, they found it not equivalent to a consent and sufficient to authorise the suspender who was a minor, seeing Brackenside was principal debtor, and the minor was bound not *in rem suam*, but as cautioner for him, as was lately decided in a case, Sir George M'Kenzie against John Fairholm, No 72. p. 8959, Sir George had subscribed as cautioner for his father when he was minor.

Gosford, MS. No 448. *p.* 128.