

in the case of Sir George M'Kenzie against Fairholm, Sect. 4. *b. t.* a son becoming cautioner with his father, the son's deed was found null; but there it was proved, the son was in his father's family entertained by him, and had no several employment or estate, neither was the son authorised by the father, but his authority was pretended indirectly, because both subscribed the same writ; but here the father doth expressly authorise.

THE LORDS found the reason of minority and lesion was excluded by the oath, and that the creditor could not insist upon the minor's reduction, himself being excluded; but as to the nullity, the LORDS, that they might prefer neither of the parties in the probation, did, before answer to the relevancy, ordain either party to produce such evidences as they could, for clearing, whether at the time of this deed the Master was in his father's family, or if he had a separate estate managed by himself, and lived a-part.

*Fol. Dic. v. 1. p. 575. Stair, v. 2. p. 578.*

\* \* \* Such oaths are utterly discharged by act 19th Parliament 1681.

1681. *November.*

GEORGE HERIOT *against* Mr HENRY BLYTH.

No 32.

A CURATOR having, in obedience to a letter sent from his minor abroad, furnished the minor's younger brother with 300 merks, the LORDS sustained the article of payment in the curator's discharge, though quarrelled upon minority and lesion, in regard it was *res minima*, and done to a brother who was indigent, and had but 400 merks of stock.

*Harcarse, (MINORITY.) No 697. p. 197.*

1683. *November.*

Sir JOHN HAY *against* POWRIE and BALLEGERNO.

No 34.

IN a declarator of recognition, at the instance of Sir John Hay of Murie against the Creditors of Ogilvy of Murie, the LORDS having, before answer, ordained the rental of the whole lands of Murie to be proved, to the effect they might know if the major part was alienated; and there being a probation *hinc inde* led and advised; mean time it being understood, that some of the witnesses who had deponed upon the rental of the lands of Murie and pertinents, had not made distinct answers in relation to the lands of Murieside, in so far as they deponed, that they knew not what the lands of Murie did pay of yearly rent, in respect they never knew them set; and it was notour to the whole country, that the lands of Murieside were set; so that it appearing the witnesses did not clearly understand the import of the ambiguous term of pertinents,

It was craved in behalf of the Lady Ballegerno; That the Lords would allow her to prove the rental of Murieside and Carcathie, which are parts and

A minor alleged, that witnesses, as to the value of lands, had not been properly examined, and craved that, on account of the privilege of a minor, they ought to be re-examined. They were ordered to be re-examined, on account of former error, without respect to the alleged privilege.