

No 12.

Found in
conformity
with No 4.
P. 3347.

1697. December 31. WAIT and RAE against PANTON.

WAIT's children, and Bailie Rae in the Canongate, who was lately their tutor, charge William Panton writer, for 1000 merks contained in his bond. He suspends, that the bairns not having chosen their curators, there was none authorised to give him a valid discharge.—*Answered, imo*, The money is payable to me for their behoof, and though my office of tutory be expired, yet I will give you sufficient warrandice; likeas, the Lords may name their advocate to be curator *ad banc litem*; 2do, A minor wanting curators may do all that a minor having curators can do.—*Replied, Plenissima securitas* to the debtors of minors is, either where they pay to curators, or on the sentence of a judge; and here a curator *ad lites* will not serve to concur with the minors in a discharge, but it must be a curator *ad negotia*, who cannot be chosen by the Lords, but only by the minor himself; and this is clear *per l. 7. § 2. D. de minor, si minor conveniat debitorem, adhibere debet curatores ut iis solvatur pecunia, alias non compellitur solvere.*—THE LORDS found the money being payable to Bailie Rae, the interposition of their authority was sufficient warrant to William Panton, the debtor, to pay. And he craving an assignation against William Gordon of Pencaitland, the principal debtor, the LORDS found, though the creditor was rigid in refusing an assignation, yet that they could not compel him; but the cautioner behoved to pursue, as accords, on his clause of relief. The 2d § *Institut. Tit. Quib. licet alienare vel non*, is in the case of pupils and tutors, but not of minors and their curators paying their creditors, or receiving sums due to them by their debtors, where the minor consumes or dilapidates the same; for *minori habenti curatorem solutio sine illius auctoritate facta non exonerat debitorem*, and the minor is restored *contra istam solutionem, nisi pecunia extet, vel in rem minoris versa sit.*

Fol. Dic. v. I. p. 221. Fountainball. v. I. p. 808.

No 13.

A personal creditor adjudging, tho' he is bound to accept of payment from another personal creditor, cannot be forced to grant an assignation, but a discharge only.

1702. February 14. HAY against TWEEDIE.

WILLIAM HAY of Drummelzier being a creditor to French of Kingledores, and adjudging his lands, compearance is made for Robert Tweedie, another creditor, who *contends*, You cannot adjudge, because I am willing immediately to pay your principal and annualrent, and true disbursed expences, *et nihil tibi deest*, you giving me an assignation to your right.—*Answered*, I am content, but I will give you nothing but a discharge, no law obliging me to assign; and you can be in no better case than the debtor who may redeem and pay, but can crave no more but a discharge and extinction of the debt; and at this rate there might be a circle, for another personal creditor may redeem from you, as you offer to do from me; and so you have no interest, unless you had affected