

1782. August 1.

JOHN KIRKMAN *against* JOSEPH PYM.

PYM was indebted to Kirkman's father, an Alderman of London, in a large sum of money, secured by an heritable bond upon some houses in Edinburgh. On the death of Alderman Kirkman the son succeeded to his heritable fortune; but no curators had been appointed to him, and he chose none for himself. In the seventeenth year of his age, he demanded payment of this debt; when Pym *objected*, that as he was without curators, payment could not then be made to him with safety; but, at the same time declared his willingness to pay the debt, upon being secured by a judgment of the Court, *causa cognita*, against the hazard of being obliged to make payment a second time.

*Observed* on the Bench; This question, which relates to the payment of a principal sum, or *sors*, is to be distinguished from all cases in which the interest only of money, or the rents of subjects, are claimed; those ordinary acts of administration which might be necessary for a minor's support. Accordingly

THE LORDS were of opinion. That as the debtor could not, even by making full money, be secure against future challenge, unless the money were to be afterwards profitably employed for the minor's behoof, so the Court ought not to interpose their authority, in order to compel him to do an act which would subject him to that hazard.

But as the minor at last made an offer of sufficient security for the debtor's indemnification, the interlocutor of the Court was as follows.

'THE LORDS find, that in this case, the Court ought not to interpose to oblige the suspender to pay the debt charged on upon the discharge and renunciation offered; and remit to the Lord Ellick Ordinary, to proceed in the cause, and to hear parties procurators upon any further security that may be offered by the charger for the indemnification of the suspender.'

Reporter, Lord Ellick.

Act. Cullen.

Alt. H. Erskine.

Clerk, Home.

S.

Fol. Dic. v. 4. p. 4. Fac. Col. No 60. p. 96.

No 93.

The Supreme Court would not authorise a debtor to pay his debt to a minor not having curators.