

1627. February 16. SIMPSON against L. BALGONY.

IN a transferring at the instance of David Simpson, burges of Dysart, against the Laird of Balgony, as heir to his father, the Lords found a service produced to verify the defender to be heir, to be sufficient, albeit it was not retoured to the chancellary, because it was used to prove *passive*; and also found the exception against the samen to be relevant *hoc loco*, without reduction or any other process, but to be received as a nullity by way of exception, viz. that the same was null, being a service done in his minority, without consent of his curators, he then having curators; which nullity was received *ope exceptionis*, albeit it was *alleged*, that it was a sentence which ought not to be reduced, because it was done to his utility, and by his own personal compearance the time of the service, which was repelled.

Act. ———.

Alt. *Ayton*.

Clerk. *Hay*.

Fol. Dic. v. 1. p. 174. Durie, p. 277.

* * * Spottiswood reports the same case :

DAVID SIMPSON in Dysart having pursued a transferring against the Laird of Balgony, as heir served to his father; it was *alleged*; That his service was not lawful as done by himself, having curators, without their consent. *Replied*, That he ought to qualify some prejudice he sustained by entering heir to his father.—THE LORDS found the exception relevant of itself, *quia* of himself, *non potuit damnosam adiisse hæreditatem*.

Spottiswood, (HEIRS.) p. 137.

* * * Auchinleck reports the same case :

THE Laird of Balgony being served heir to his father in his minority, without consent of his curators, the service was fund null by way of exception, because it was *passive*.

Auchinleck, MS. p. 2.

1628. July 9. VISCOUNT of STORMONT against LAIRD of DRUM.

Minor curatorem habens may annul a bond made to his hurt by way of suspension, producing his act of curatory, and taking a day to prove his minority.

Fol. Dic. v. 1. p. 174. Auchinleck, MS. p. 133.

No 57.

Contrary to the above, a minor was allowed to propone, by way of exception, that he having curators, had entered to his predecessor without their consent, although he qualified no lesion thereby sustained.

No 58.

A bond granted by a minor, without his curators' consent, was found challengeable by way of exception.