

1628. July 1. FORBES of Gask against L. PITSLIGO.

PITSLIGO and his curators having charged Forbes of Gask, for payment of a sum contained in his bond given to the minor, and suspension being raised upon this reason, that the minor and his curators knowing that a part of the sum was not a just debt, they, at the subscribing of the bond, promised not to seek the same, but to discharge him thereof; and referred this to the minor's oath, and curators; and the curators being all absent, and the minor present, and offering to give his oath, and the suspender contending, that his oath could not be given while his curators were present, who might call him to remembrance of the promise, and of the reasons thereof; the LORDS ordained the minor's oath to be presently taken, without delaying of the same, while the curators were present; for if they were present, and should confess the promise, yet the minor could not thereby be hurt, if he would not acknowledge the same.

Act. Hay.

Alt. Mowat.

Clerk, Gibson.

Fol. Dic. v. 2. p. 238. Durie, p. 379.

* * Auchinleck's report of this case is No 26. p. 8920, voce MINOR.

1630. March 6. BARCLAY against BINNIE.

ALEXANDER BARCLAY charging William Binnie and Mr Robert Livingston for 500 merks, conform to their bond, and they suspending, because the charger's wife (he and she keeping an open change-house in Edinburgh) had received as much beer and ale in their house since the date of their bond, as in price extended to the sum acclaimed, which they referred to her oath of verity; and the charger *alleging*, That this reason ought not to be admitted to take away his registered bond, the debt neither being declared, nor yet liquid, neither could his wife's oath be taken to his prejudice;—the LORDS, nevertheless, found the reason relevant to be proved by the wife's oath, in respect both the debt and the price was referred to her oath, whereby it would be declared, if it was a true debt, and also she was to declare the prices; and whereupon the LORDS found, That the wife might depone, albeit having an husband, seeing they kept an open change-house, and the wife might receive ale and drinking-beer therein as she did before, the husband never disallowing thereof.

Act. King.

Alt. ———.

Clerk, Gibson.

Fol. Dic. v. 2. p. 238. Durie, p. 501.

No 327.
Found relevant to be proved by the oath of a minor, but not of his curators, that at taking a bond, it had been agreed to abate part of the sum.

No 328.
Furnishing of ale, &c. to one who kept a tavern, and prices thereof, relevant to be proved by his wife's oath.