

was ordained to have effect; seeing after the sentence, the defender could not transact nor pay the minor, albeit then major, in prejudice thereof; for it might be, that Stodart the curator, in his curator-compts, would be found super-expended, and so had just reason to intromit with the minor's monies; and after sentence the debtor could not be reputed to have done *bona fide* to deal with any party without him, at whose instance sentence was recovered against him.

Clerk, Hay.

Durie, p. 645.

No 28.

1634. January 15.

SIR R. HEPBURN against HEPBURN.

SIR ROBERT HEPBURN being charged by his son and Sir John Seaton his father-in-law, to pay to his son 20 chalders of victual, conform to the obligation contained in their contract of marriage; and Sir Robert *alleging*, in his suspension, That his son had promised to him, and sworn by his oath, (which promise the father then accepted) that he should be content with 18 chalders, and never seek more from him; and the son *replying*, That he was then minor, and yet is presently, and now revokes that promise, as done to his enorm hurt and lesion; likeas, Sir John Seaton, the father-in-law, *alleged*, That the said promise, for the said reason alleged by the son, was not in law obligatory; attour that he was a party contractor, and now charger in favours of his good-son and his daughter, for whose aliment this provision was contracted, and so his good-son could not discharge any part thereof, specially being done by contract of marriage, which is *contractus optimæ fidei*, and the father could not, in prejudice thereof, accept any promise made by the son, being then, and yet minor, without his consent, who was contractor. THE LORDS found this reason relevant to be proved by the son's oath, albeit then, and yet he was minor; seeing it was alleged to be sworn by the son, and that it was accepted by the father, the son being the time of the making thereof 20 years of age, and so *proximus majoritati*; and found, that this promise tended not to his enorm lesion, the oath and promise, if the son should confess it, being made to the father in his old age and sickness, and who only did retain two chalders of twenty, in respect of the authentic, *sacramenta puberum, Cod. Si advers. venditionem*; neither respected they *in re tam minuta*, where the payment was only to be made during the father's lifetime, who was in heavy sickness, and like shortly to die, that the promise was not alleged to be made and judicially sworn, but that it was extrajudicial betwixt the father and the son; but found that the acceptance by the father ought also to be proved by the son's oath; and the son being sworn, denied that the father accepted of the promise, albeit he granted the making thereof; and so the father was decerned therein, albeit he swore he had accepted of the promise.

Act. Stuart.

Alt. Nicolson et Nairn.

Clerk, Hay.

Durie, p. 697.

No 29.

A promise by a minor may be proved by his oath.