

1637. June 29. L. LAMOND *against* MURRAY.

No 59.

The Lords found that the exception of minority, pleaded by one, who, at granting the writ in controversy, was *in familia paterna*, was receivable without necessity of reduction.

THE LAIRD of Lamond, suspending the charges given by Donald Murray, upon an obligation granted him of 3000 merks, upon this reason, That at the time of the bond he was minor, and was then *in familia paterna*, and done without his consent, who in law is his administrator, and therefore was null; likeas he has intented reduction upon this same reason, which he produced in process. And the charger *answering*, That when his reduction is insisted upon, and ready for reasoning, he shall answer thereto; but by way of suspension, it is against the practice and reason, to receive this allegiance, it consisting *in facto*, to be tried so summarily, where it cannot be instantly verified, but must receive terms of probation; specially seeing he is content to find caution, to refund the money in case the suspender prevail in this reduction.—THE LORDS found, That they would receive this reason of minority to be discussed, and tried in this same place, by way of suspension, without necessity of further process in reduction, but declared, that they would assign only one term to prove the same, without prorogation of further diets, and therefore assigned a day to prove the reasons, at the which term the LORDS declared they would conclude the process and advise the cause, and would grant no more terms to prove.

Act. Gilmour.

Alt. —.

Clerk, Scot.

*Fol. Dic. v. 1. p. 175. Durie, p. 847.*

1665. December 22. SIR JOHN LESLIE *against* SINCLAR and DUN.

No 60.

Decided in conformity with the above.

SIR JOHN LESLIE, as assignee constitute by Sir William Dick, to a bond obliging Francis Sinclair as principal, and young Dun as cautioner, to deliver 30 chalders of bear, at 10 merks the boll, Dun *alleges* absolvitor, because he was minor *in familia paterna*, and so his father was his curator of law, and therefore his subscribing as cautioner was null, being without his father's consent.—It was *answered*, The allegiance was not competent by exception, against a clear liquid bond; *secondly*, That the defence is only competent in the case of curators chosen.

THE LORDS found the defence competent by way of exception; but before answer to the relevancy, ordained the parties to condescend upon Dun's age the time of his subscription, and whether he did then administrate, or go about any other affairs. See MINOR.

*Fol. Dic. v. 1. p. 175. Stair, v. 1. p. 329.*