

1671. *December 8.* MR. GEORGE SCOT of Giblieston *against* MR. JOHN ELEIS, Elder, of Eleiston.

THIS was a suspension and a reduction of a bond of L.1182 granted by Mr. George to Eleiston, upon reasons coincident, viz. that the bond was elicited from him by Mr. John, being his tutor and curator, some few months after his majority, and so when he was *in confinio minoritatis*, and at the very time when Mr. George was going to subscribe his contract of marriage, and so *æstro amoris percitus*; wherein he refused to concur with him, unless he had subscribed this bond. *2do*, That it was a bond granted by a pupil to his tutor and curator *ante redditas rationes*, and so must be presumed to be satisfied out of his superintromission, and therefore Eleiston must count over again. (*Vide Dury, July 4, 1635, Monimusk.*)

To thir it was ANSWERED,—That this *confinium* is *inauditum in jure*; it having been frequently pled why bonds granted within few months of majority should sustain, but never that a bond granted after the arriving to complete majority should be null; there is a *confinium intra, sed nullum extra*. To the *second* the same is wholly ridiculous, seeing *Imo*, Eleiston was never his tutor; *2do, esto* he had been, it were a most dangerous preparative to permit minors, after their majority, counting with their tutors or curators, and discharging them, or homologating their actings, either *quoad* the whole or a part, and retiring the instructions of the account, to be reponed against the same, and to make them count again *de novo*; which is directly Eleiston's case. See more of the dispute in the informations with me.

Which being taken to interlocutor by Craigie, the Lords repelled the *confinium majoritatis* and circumvention, with the reason of suspension and reduction founded thereon, against the discharge of the account, and bond granted for the balance thereof; and find the letters orderly proceeded, notwithstanding of these reasons; and find that reason bearing that the charger being tutor to the suspender has not yet made his tutor counts, and so is presumed to have as much of the minor's means in his hands as will compensate the sums charged for, relevant *ad hunc effectum* to stop execution at the charger's instance till the event of the tutor's counts, that *inde* it may be constant if he has as much of the suspender's means in his hands as will compensate the sum charged; and for that effect, ordain the parties to count before; but prejudice always to the charger's lawful defences, why he ought not to count as tutor to the suspender, and in case it shall be found he ought to count as tutor, yet he shall not be holden to count for any thing contained in the fitted account for which the foresaid bond was granted. And the Lords ordain the charger to give his oath if he has in his hand any instructions or verifications of the articles of the former fitted account, and to deliver up to the suspender what he has of the same.

*Advocates' MS. No. 286, folio 120.*