

M I N O R.

SECT. I.

Whether liable to Penalties.—Whether liable to be imprisoned for Debt.—Whether capable of being a Messenger.—Whether he may be convened as a haver of Writs.—Whether Decree may pass against him.—Whether bound to depone on the verity of his Debt.—Power of the Court to prevent undue influence in chusing Curators.

1541. *January 23.* SOMERVILLE *against* HAMILTON.

THE Lords of Council decerned in a cause of spuilzie, moved by one Somerville, Parish Clerk of the Kirk of N. against one called, *ut recordor*, Hamilton and his Son, That the said son ought to answer *in causa spoliu intentata*, notwithstanding that, *tempore spoliu*, Mr Thomas Marjoribanks, his Procurator alleged he was but six years old, and so could not *peccare, nec vim committere*, nor yet be obliged *ex delicto causante defectu intellectus in illa causa*. Which allegiance the LORDS thought reasonable, *in causa criminali, sed non civili, nec cum aliena jactura locupletetur et injuste rem alienam detinuerit*.

No 1.

Fol. Dic. v. 1. p. 575. Sinclair, MS. p. 4.