

S E C T. V.

Acting in one Capacity, whether it infers consent necessary to be given in another Capacity.

1623. *March* II.L. BARGENIE *against* HIS BAIRNS.

WHERE a curator's subscription, who is not designed in the contract curator, but upon the contrary, is a principal distinct party contracter with the minor, on the other part, is holden as no subscription of a curator.

Alleged, Josias, who is curator, once having subscribed, that imports his consent to the obligations therein contained, and one subscription may serve, both for his consent to the minor's obligation, and also for fulfilling the obligations to the minor, *et in dubiis interpretatio fieri debet ut actus valeat, non ut pereat*. *Replied*, The subscription must be ruled according to the contracting of the parties, and only be relative thereto.

Repell the allegiance.

Clerk, *Durie*.

Fol. Dic. v. 1. p. 379. Nicolson, MS. No 553. p. 381.

1633. *February* 12.FORBES *against* FORBES.

A BOND being desired to be reduced at the instance of a person interdicted, because it was subscribed by him then interdicted, without consent of the interdictors, there being two, whose consent by the interdiction is declared to be requisite to all deeds done by him, and the bond quarrelled was not consented to by any two, nor by none of the interdictors;—and the defender *alleged*, That this bond was subscribed by one of the interdictors as cautioner for the person interdicted, which was to be reputed, likeas if he had consented; likeas ———, who is another of the interdictors, promised to subscribe the bond; and so the bond must be as valid as if two had consented thereto. THE LORDS repelled this allegiance, and found the subscribing of the interdictor as cautioner (he not consenting *eo nomine* as interdictor) and the promise made by the other to subscribe, he not having subscribed conform to his alleged promise, not sufficient to sustain the bond, which as it was produced, and is now quarrelled, wanted the consent and subscription of two of the pursuer's interdictors. In this process it was thought by the Lords (albeit the process ran not upon this ground, neither was it then questioned or decided) that the creditor contracting after interdiction, without consent of the interdictors, where the per-

No 49.

Subscription of a curator as party, and not as curator, is no consent as curator.

No 50.

An interdictor having subscribed a bond as cautioner only, not as interdictor, the bond was reduced as wanting his consent.