

that if they were present they should give their oaths; and if they compeared not after citation, they should be holden as confest.

No 24.

Act. King's Advocate, Aiton, Nicolson et Stuart.
et Lawtie.

Alt. Belshes, Cunninghame, Mowat,
Clerk, Gibson.

Fol. Dic. v. I. p. 575. Durie, p. 375.

. Kerse reports this case :

June 20.—FOUND that a minor being past 15 years of age may be holden as confest.

Kerse, fol. 146.

1628. June 26.

DUNBAR against LESLY.

THE SON of Hugh Dunbar of Lochingelloch, cautioner to John Lesly taylor, for the Laird of Mochrin, being minor, and charged to enter heir to his said father, at the instance of the said John; James suffers the bond wherein his father was cautioner to the said John Lesly to be transferred against him for null defence as charged to enter heir. Thereafter the said minor suspends the decret, and finds George Campbell of Horsecleugh cautioner for him, against which protestations were admitted. Thereafter the minor raises a new suspension for him, and the said George Campbell as cautioner for him, and finds one George Dunbar cautioner for them in the said suspension, and likewise raised reduction of the decret of transferring. The reason of reduction and suspension were both one, viz. that the said minor, with consent of his curators, offers to renounce to be heir; and, at the purchasing of the suspension, the renunciation was produced to the clerk of the bills, subscribed by the minor and his curators; but, before the day of compearance, the minor dies; notwithstanding George Campbell his cautioner insists to pursue the reduction of the decret for his own relief, the same being raised at the instance of them both. It is *alleged* by James Lesly, That this renunciation cannot be offered now by the cautioner after the maker's decease, seeing it was a personal action to be done only by the maker thereof, who might either use the same or not at his pleasure; and if it had been used by himself, the defender might have alleged that it could not be received *quia immiscuit se hereditariis bonis*; and referred the same to his oath, of which reply and probation he is now prejudged by his decease. To which it was *answered*, That the reasons of reduction were relevant, notwithstanding of the answer; for the renunciation being lawfully made by the defunct, and produced and used by him in obtaining of the said second suspension, his death thereafter could not make it ineffectual to produce relief to his cautioner; as, for the inconveniency falling out by his death anent the

No 25.
A cautioner of a minor, was allowed to produce the minor's renunciation to be heir, after the minor's death.

No 25. probation by his oath, there is no law can stay these and the like fatalities. THE LORDS found the reason of reduction relevant.

Auchinleck, MS. p. 131.

. This case, as reported by Spottiswood and Durie, is No 15. p. 5392, *voce* HEIRSHIP MOVEABLES.

No 26. 1628. July 1. FORBES of Gask *against* Laird of PITSLIGO.

FORBES of Gask is obliged, by his bond, to pay to the Laird of Pitsligo 2,400 merks; the bond is registered and the Laird charges for the money. The defender suspends, *alleging*, The Laird of Pitsligo and his curators promised to discharge him of 400 merks of the said sum, and referred the same to the Laird's oath of verity and his curators. It is *alleged* by Pitsligo, That his curators might not depone to his prejudice, and that he was ready to give his own oath. THE LORDS found the reply relevant, and ordained the Laird to give his oath.

Auchinleck, MS. p. 133.

No 27. 1631. December 19. ANDREW FORSYTH *against* JOHN ANDERSON.

A MINOR gives a bond for satisfaction of a decret obtained against his father, to whom he is heir or executor; the minor craves by summons to be restored against his bond. It is *excepted*, That he cannot crave restitution, because by the bond he receives no lesion in respect of the decret obtained against his father for the debt which he must be subject to pay as heir or executor. THE LORDS found he could not be restored, if the debt was certain whereunto he was obliged before the bond, which must be proved *scripto vel juramento*.

Auchinleck, MS. p. 136.

No 28. 1632. July 13. STODART *against* L. COCKILFERRIE.

ONE Stodart having recovered a sentence against Cockilferrie for a sum owing by his bond made thereupon to this Stodart, in his own name, albeit he acknowledged the monies to pertain to ——— his minor, to whom he was curator; and immediately after the decret, the minor becoming major, Cockilferrie obtains a discharge in his majority from him of this sum; and thereupon Stodart suspends and desires to be freed of the sentence obtained by Stodart; which reason and discharge produced was not allowed, but Stodart's decret