

servance of any contract made by him without consent of his said curators, but restores him against the same; because the said deeds being *ipso jure* null, there is no act whereto the oath can be accessory; *quod non est nequit confirmari; non entis nulla dantur accidentia, nullæ qualitates.* Sic Hadington, 15th December 1609, Constable of Dundy. Sic Perezius, in *Paratitlis ad supra-d. Tit. C. Si adversus venditionem*, who shows that the canons order all oaths given by minors, without distinction, to be sacred and inviolable, *cap. 28 ext. de jure jurando*, but that the French law rejects all such oaths *ob lubricitatem ætatis, in qua æque facile est iis jurare ac contrahere*, and restores minors against them whether they be adjected *contractui valido vel invalido; nam quæ contra legem fiunt, nulla stipulatione, nullo mandato, imo nullo sacramento firmitatem capere debent; L. 5. in fine C. de legibus.* Vide *L. septimam, p. 16. D. de Pactis, ibique Gothofredum.* Gudelinus, *De jure novissimo, libro 3tio, cap. 14*, shows this also to be the law of both *Gallia Celtica et Belgica.* Vide *infra*, Provost Currie's case, 10th January 1680.

*Advocates' MS. No. 328, folio 131.*

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1672. February. Anent PROBATION by WITNESSES.

ABOUT this time one being pursued to pay the sum of L.40, conform to his bond; he offered to prove payment by witnesses, which he alleged to be lawful for him to do, the sum being within L.100. To this it was ANSWERED, That the payment of L.100 might be proven *per testes*, where the debt was not constituted by writ; but wherever any sum, though never so small, was due by writ, the same can never be taken away except by writ or oath of party. The Lords refused to admit witnesses against writ, though it was *in re tam modica*. And truly this is agreeable to former practiques. See Dury, 15th July 1624, Nisbet and Short, with the quotation on the margin, out of Antonius Faber. See Hadington, 15th November 1622, Macgill and Forrest; *infra* November 1673, [Syme against Inglis,] numero 429. See Dury 4th July 1632, Dalrymple against Closeburne.

The Lords also refused to admit the probation of a promise of L.20 only to witnesses, but ordained it though never so mean to be proven *scripto vel juramento*. Yet see the contrary in Dury, 25th February 1636, Laird of Ernock.

*Advocates' MS. No. 329, folio 131.*

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1672. January 18, and February. MR. THOMAS RAMSAY, minister at Mordington, against Jo. RENTON of Lammerton.

Jan. 18.—MR. THOMAS RAMSAY, minister at Mordington, having recovered decret in 1656, before the sheriff of Berwick, against Jo. Renton of Lammerton, for pay-