

No 75.
 ' not assign
 ' gratuitously,
 ' and dying
 ' without
 ' heirs of her
 ' body, or
 ' without dis-
 ' posing for
 ' onerous
 ' causes, the
 ' same should
 ' return to the
 ' granter's
 ' heir. She
 pursuing a
 constitution
 of the debt
 against the
 heir, was
 found entitled
 to uplift in
 her minority
 only the an-
 nualrents,
 and not the
 principal sum,
 unless for an
 onerous
 cause.

no *lis*, or necessary action; especially considering, that the bond is so qualified, that it was not in the creditor's power to assign without an onerous cause; and she dying without lawful heirs of her body, or without disposing for onerous causes, the portion should return to the defender; whereby he has an evident interest to retain, at least to elide any process intented in minority without consent of curators having an universal authority.

Replied for the pursuer; The defender is only a substitute in certain events; and albeit the pursuer cannot assign but for onerous causes, she may exact payment, at least with a quality that the principal sum shall be re-employed in the terms of the substitution; as was decided betwixt the Lord Ballenden and the Earl of Roxburgh; and in the case of Mrs Margaret Douglas, against Douglass of Bridgefoord.

Duplied for the defender, Neither is the pursuer a simple fiar, nor the defender a naked substitute, nor is the caution offered sufficient to hinder the alteration of the destination. For the money being uplifted and discharged, although once re-employed in the same terms, it were easy by a new remove to evacuate the conditions of the bond to the prejudice of the defender; *2do*, It was found, 25th February 1663, betwixt James and Marjory Aikenheads, that a sum assigned to James Aikenhead and his heirs, which failing, to the said Marjory and her heirs, could not be uplifted by him in his minority; *voce* WRIT.

THE LORDS found the defender liable for the sums in the bond of provision; but that the pursuer could not uplift the principal, but only the annualrents, in her minority, unless for an onerous cause; and therefore decerned in the constitution of the debt against the defender, superceding execution as to the principal during the minority except for onerous causes.

Fol. Dic. v. I. p. 577. Forbes, p. 85.

1726. *January 26.* MARQUIS of CLYDSDALE *against* EARL of DUNDONALD.

No 75.

A MINOR, even with consent of his curators, cannot gratuitously alter the settlements of his estate.

Fol. Dic. v. I. p. 577. Rem. Dec.

* * * This case is No 3. p. 1265. *voce* BASE INFETTMENT.

1728. *December 24.* HUNTER *against* —

No 76.

A REMUNERATORY donation of two small tenements in the town of Ayr granted by William Hamilton, a minor, above twenty years of age, to his brother uterine, was reduced at the instance of the heir upon this *medium*, that a minor, though he has power to test upon moveables, can do no gratuitous deed in prejudice of his heir. See APPENDIX.

Fol. Dic. v. I. p. 577.