

*Replied* for the pursuer, That by the current of decisions, it has been determined, that the heir is bound to maintain his brethren and sisters, in case of their having no fund of their own for their aliment; as 29th January 1663, Children of Netherly *contra* the Heir, No 50. p. 415.; 11th February 1663, Frazer *contra* Frazer, No 51. p. 415., nor is there any thing more conform to nature and humanity. So that the pursuer needed not make any other use of the destination in the testament than to shew the defunct's *enixa voluntas*, that the children's portions should be paid to them entire at the terms he had appointed.

No 37.

THE LORDS found, That the curators might employ the minor's stock in joining with a person held and repute of knowledge and reputation in trade; but found, that the stock could not be diminished for the aliment.

Act. *Hall & Colvil.*Alt. *Smollet & Bruce.*Clerk, *Roberton.**Bruce, v. I. No 110. p. 136.*1724. *November 28.*A. *against* B.

No 38.

A woman, minor, had a bond granted to her, bearing interest, and during her minority she married. The husband, as her curator, pursued the debtor for payment, who *objected*, that he could not be obliged to pay to him, for though he was curator to his wife, yet he had not made up inventories, nor found caution, as a curator ought to do.

It was *answered* for the husband, That the law had made him curator, without the necessity of making up inventories, or finding caution.

THE LORDS were of opinion, That it was *jus tertii* to the debtor, and he had no right to make the objection, though the wife's friends might possibly be entitled to do it; because by the husband's uplifting the money, he brought it under the *jus mariti*, which it was not formerly, and thereby the woman might be prejudged.

*Edgar, p. 123.*1735. *July 25.* HAY of HOPES *against* HEPBURN of Monkrig.

No 39.

A Commissioner of Supply, by the nature of his office, is a judge, and also liable as cautioner for the collector; and, therefore, it being *objected* against a Commissioner of Supply, in a question which of two was legally chosen collector, that he was minor, the objection was sustained. See APPENDIX.

*Fol. Dic. v. I. p. 576.*