1731. *January* 29. M'CULLOCH *against* M'CULLOCH.

No 77.

A MAN, in his second contract of marriage, obliged himself 'to lay out a 'certain sum upon good security, in lands, to himself and his future spouse, 'and to the children to be procreated betwixt them; which failing, the same 'to accresce, pertain, and belong to the husband's nearest heirs and assignees.' In a pursuit at the instance of the heir of this marriage, being minor, for the above sum, against the heir of the first marriage, it was found that the pursuer might uplift the sums pursued for, but that he could not, in his minority, gratuitously defeat the substitution; but found no necessity at present to determine what might be competent to him after his majority. *See* APPENDIX.

Fol. Dic. v. 1. *p.* 578.

1739. *January* 6. WADDEL *against* WADDEL.

No 78.
Whether a minor can test upon moveables, notwithstanding a substitution.

A FATHER having made a settlement of his estate, consisting all of moveables, in favour of his son and daughter, equally between them; and failing any one of them by decease before marriage or majority, to the survivor, their heirs, executors, or assignees; after the father's death, the son died while minor and unmarried, after having by testament conveyed his half to his sister in liferent, and her children in fee; which being quarrelled by his sister, as to her prejudice, it was found, 'That the pursuer's brother having died minor and unmar-'ried, could not, by deed of his, disappoint the father's destination.'

N B. It was admitted, that notwithstanding a substitution in moveables, the institute might thereupon test in his minority; but in respect the substitution was here limited to the event of the person's dying before majority or marriage, it was considered not as a simple substitution, but to imply a prohibition to alter before majority or marriage.

Fol. Dic. v. 1. *p.* 578. *Kilkerran*, (MINOR.) *No* 1. *p.* 345.

1739. *December.* WILLIAMSON *against* FRASER.

No 79.

FOUND, that a minor, who had submitted with consent of his curators, in a case, which of its nature was pretty much involved in fact, *utebatur jure communi*, and could not be heard to quarrel the decreet arbitral upon iniquity; and in the reasoning, taken for granted, that he might with their consent have transacted.

It might be very prejudicial to minors, if in such cases especially as are proper subjects of transaction, yet they could not terminate them by submission