

No 327.

A minor having raised reduction of a bond, which bore expressly, that he was major, it was found, that the bond was not reducible, unless he could prove that the creditor knew he was a minor, or induced him to insert the clause.

1665. February 23.

KENNEDY against WEIR.

KENNEDY of Auchtifardel having charged William Weir upon a bond of 300 merks, he suspends, and raises reduction, upon minority and lesion. The charger *answered*, Minority takes no place where the minor is *in dolo*, as *si minor se esse majorem dixerit*; but, in this bond, the suspender expressly acknowledged himself to be then major. The suspender *answered*, That *eadem facilitate* that he was induced to subscribe the bond, he might be induced to insert that clause; which therefore cannot prove, unless it were otherwise proved, that he did induce the charger to lend him money on that ground.

THE LORDS found his acknowledgement in the bond was sufficient, unless he instructed that he was induced to insert that clause, not on his own motion, or that the charger knew that he was minor, or was obliged to know the same, by his being tutor or curator, or might have visibly known the same by the sight of his age; and thought it not reasonable to put it to the debtor's oath, to dis-appoint the creditor.

*Fol. Dic. v. 2. p. 165. Stair, v. 1. p. 274.*

\* \* \* Gilmour reports this case:

WILLIAM WEIR of Clarkston being charged at the instance of William Kennedy of Auchtifardel, for payment of a sum of money contained in his bond, suspends upon a reason of minority and lesion. To which it was *answered*, That he cannot be heard to object minority, because, in the bond, he acknowledges himself to be major, and, by the law in such cases, restitution is not competent, *quia minoribus deceptis non decipientibus jura subveniunt*. *Replied*, That *eadem facilitate* he was induced to subscribe the acknowledgement, as he was to subscribe the bond; neither can the acknowledgement operate in favour of the charger, who was tutor or curator to the suspender, and consequently obliged to have known or tried his age. Likeas, there is a clause in the bond obliging the suspender not to revoke the bond upon any ground whatsoever; and there can be no imaginable ground beside minority and lesion; which clearly evinceth, that the charger has conceived the suspender to be minor, when he took him so obliged.

THE LORDS repelled the answer, in respect of the reply.

*Gilmour, No. 139. p. 101.*

No 328.

Debated whether a disposition under reduction as *in lecto* was to be held as

1666. December 21.

CORSTORPHIN against MARTINS.

JAMES CORSTORPHIN pursues a reduction of a disposition made by his father's sister *in lecto*. It was *alleged* by Martins, to whom the disposition was made,