

1629. *December 11.* GORDON of Butle *against* E. GALLOWAY.

No 54.

IN an action, Gordon of Butle against Earl of Galloway, for payment of a sum contained in the Earl of Galloway's obligation, which he alleged to be null, being made in his minority, having then curators, without their consent; the LORDS sustained the obligation; because it was alleged and replied, that the money was actually delivered, and received by the said defender, and was converted by him to his utility and profit, which was admitted to sustain the obligation.

Act. *Nicolson & Hope.*

Alt. *Neilson.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 576. Durie, p. 473.

1631. *February 5.*

JOHN INGLIS *against* The EXECUTORS of Umquhile JOHN SHARP.

No 55.

THE Executors being convened for L. 417, as the price of certain clothes and wares, furnished by the pursuers to the said John in the years 1627 and 1628, for the abuilziements of his body; and the said executors *alleging*, That the said Sharp was minor the time of the said furnishing, and then had curators, without whose consent or direction the said furnishing being made, the pursuer could not have action therefor; the LORDS repelled this allegiance, in respect the minor, the time of the furnishing, was 18 years of age, and that the same was made to him for his necessary abuilziements, and that he being a young man of a good estate, the furnishing was not immoderate, the defenders never alleging, that the minor was otherways furnished by his curators; and the pursuer also offering to prove, that he had made the like furnishing to the minor in other preceding years, for which he was satisfied; in respect whereof, the action was sustained; and the LORDS found no necessity, that the minor's curators should be first discussed, before the executors could be convened.

A merchant may lawfully supply a minor with clothes, and other necessaries, without orders from his curators.

Act. *Nicolson & Neilson.*

Alt. *Burnet.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 576. Durie, p. 565.

* * * Auchinleck reports this case.

JOHN DOUGLAS, merchant, pursues Anna Sharp, relict of umquhile Robert Bruce of Pittellie, executrix confirmed to umquhile John Sharp, for payment of certain merchandize, furnished for apparel to the said umquhile John Sharp,

No 55.

a little before his decease. It was *excepted* by the defender, That the said umquhile John Sharp being minor, his executors cannot be obliged for any gear furnished to him, without direction of his curators. It was *replied*, That the pursuer being his merchant before, and in use to furnish him, and being past 16 or 17 years of age, might very lawfully take up such merchandize as was necessary for him, *viz.* apparel, whereof he produced the account, and offered to prove the receipt of the particulars by the minor; and referred to the Lords the reasonableness of the prices. THE LORDS repelled the exception, in respect of the reply.

Auchinleck, MS. p. 135.

No 56.

1632. December 19.

MAXWELL *against* EARL OF NITHSDALE.

A MINOR having signed his sister's contract of marriage, and therein promised a sum in tocher to her, he having curators, without their consent; it was reduced by the Lords, though the action thereupon was moved forty or forty-five years thereafter; but they reponed the sister also, who had in the contract discharged her bairns part of gear.

Fol. Dic. v. I. p. 576. Durie.

* * * This case is No. 45. p. 2115. *voce* CAUTIONER.

1634. March 22.

RYND *against* E. DUNFERMLINE.

No 57.
Found in conformity with
Inglis *against*
Sharp, No 55.
p. 8941.

JOHN RYND pursuing the Earl of Dunfermline for sums, as the price of merchant-wares furnished to him and his Lady, conform to his subscribed account; and sundry of the particulars of the account wanting the consent and direction of the defender's curators, being then and yet minor, and so alleged to be null; the allegiance was repelled, and the action sustained; in respect the whole account was subscribed by the minor, and the greatest part of the articles had the approbation of his curators: Likeas, the pursuer was his ordinary merchant, who was in use to furnish him in all times preceding.

Clerk, *Scot.*

Fol. Dic. v. I. p. 576. Durie, p. 716.