1724. *November* 17.

DAVID MUIRHEAD *against* AGNES MUIRHEAD of Drumpark, and her HUSBAND.

No 66.
Found, That a minor having curators could not, in his contract of marriage, without their consent, alter the destination of succession in a tailzie from heirs-male to heirs of line; but found, that if the minor had no curators, he might, in his contract of marriage, alter such destination of succession.

THE settlement and possession of the estate of Drumpark is narrated in a decision, marked February 11th, 1724, *voce* MUTUAL CONTRACT, which having gone in favour of Agnes, and she ready to extract her decreet, David Muirhead, grandchild to old David by a second son, insisted in a reduction of the destination in John's contract of marriage, by which he altered the succession from heirs-male to heirs-female, upon these grounds, that he was minor, and could not make such an alteration; and though he could, yet the contract was null, because he had curators, and their consent was not adhibited to it.

It was *answered*, That a minor might do any deed which was not to his lesion; that the settlement was onerous, being in John's own contract of marriage, and was so far from being to his hurt, that it was rather for his interest, since thereby the estate was settled upon his daughters, in exclusion only of extraneous heirs-male; 2*do*, Though he had curators, (which was denied,) yet he might, without their consent, do any rational or beneficial deed for himself, and his onerous deeds would be binding; December 11th, 1629, Earl of Galloway, No 54. p. 8941.; February 5th, 1621, Inglis against Sharp, No 55. p. 8941.; January 9th, 1629, Brown against Nicolson, No 52. p. 8940.; and February 24th, 1672, Corsar against Deans, No 60. p. 8944.

THE LORDS found, that a minor having curators cannot, in his contract of marriage, without their consent, alter the destination of succession in a tailzie, from heirs-male to heirs of line; but found, that if the minor had no curators, he might in his contract of marriage alter the said destination of succession; which not being revoked *intra annos utiles*, was binding, and not reducible.

Act. *Ja. Graham*, sen. Alt. *Ja. Fergusson*, sen. Clerk, *Gibson*.

Edgar, *p.* 118.

1732. *July* 5. CRAIG *against* GRANT.

No 67.

A BILL, granted by a minor, safe from the exception of minority and lesion, because he was a trading merchant at the time, was challenged as null, being without consent of the minor's father, administrator-in-law. *Answered*, That, if the minor's being a trading merchant is sufficient to presume it a reasonable act, so as to defeat the exception of lesion, it must, of course, also defeat the nullity arising from want of the administrator's consent; for deeds done by minors, without consent of curators, are effectual, if rational and prudent, as well

No 67. as where they are *in rem versum* of the minor.—THE LORDS repelled the defence.—*See* APPENDIX.

Fol. Dic. v. 1. *p.* 577.

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57. *December* 14.

KATHARINE CRAIG *against* WILLIAM LINDSAY, and Others.

No 68.
A deed *inter vivos*, made by a minor, without consent of his curators, void.

JOHN CRAIG, at his death, left a son, William, and a daughter, Katharine, both infants. To William he gave his land, worth about 400 merks yearly, and a general disposition to his moveable subjects, worth 600 merks, with the burden of debts. To Katharine he gave a bond of provision of 3600 merks, which was a debt upon her brother.

William Lindsay, and three others, tutors to William Craig, during William's minority, saved out of the rents of the estate 2200 merks, and lent it out upon moveable bonds. A few months before his majority, they prevailed upon him to grant to themselves, and to eight others, their relations, a deed, whereby 'he bound and obliged him, his heirs and executors, *&c.* thankfully 'to content and pay, upon the first term after his decease, to the persons 'therein named, the several sums therein expressed, with annualrent from and 'after the term of payment: And for the more sure payment of these respective sums, he thereby constituted and appointed them his lawful cessioners 'and assignees, in and to the particular debts and sums of money therein mentioned.' And by an after clause in the same deed, he 'disponed and assigned to the same persons his whole *bona mobilia*, body-clothes, *&c.* with power 'to them, immediately after his decease, to intromit with and dispose upon 'the premises.' The sums contained in this obligation exhausted the whole moveable subjects of William; and the bonds assigned in security of that obligation, were the bonds which had been taken by the tutors for the savings of the estate. This deed contained a power of revocation. William died soon after, and before majority.

Katharine, upon her brother's death, brought a reduction of this deed; and *pleaded*, That if it was to be considered as a disposition, which it truly is, seeing it creates an obligation, and contains an assignation in security thereof, then it is void, as being a gratuitous deed, granted by a minor, having curators, without their consent; or if it be considered as a testament, then it is void, as gratuitously granted, in prejudice of the relief competent to the heir from the testator's moveable subject, and to that relief which Katharine herself was entitled to, for the payment of her own portion of 3600 merks.

Answered for the defenders, If the deed in question is to be considered as a disposition *inter vivos*, minors are not disabled to make such dispositions, unless where they make them to their prejudice. It conveys only moveable