

No 98.

1583.

CRAIG *against* JOHN COCKBURN.

MR THOMAS CRAIG advocate being bound as cautioner in the sum of 1000 merks for one John Cockburn, obtained this bond transferred in John's son who was minor, and thereupon charged him to relieve him thereof. He suspended, and *alleged*, That the decret of transferring was given against him for not compearance; likeas, now he offered to renounce *re integra*. *Replied*, In respect of the decret standing, he could not be heard to say against it, but *via restitutionis in integrum, et via actionis*. *Duplied*, *Setentia lata adversus minorem indefensum est ipso jure nulla*, and he being presently content to renounce, he should not be put to a new action. THE LORDS found the decret should stand until it were reduced.

*Spottiswood*, (MINORS AND PUPILS.) p. 212.

1584. January.

ROBERTSON *against* OSWALD.

No 99.

A minor having alienated lands without consent of his curators, the Lords found, that, although he had been silent for many years after the *quadriennium utile* was expired, yet he might pursue *via ordinaria*, to get the alienation declared null *ab initio*, and that the circumscribing minors within the *quadriennium utile*, is only in case they need the *remedium extraordinarium* of a reduction.

THERE was one called Oswald, that had made one Robertson cessioner and assignee to an action of reduction, of certain infestments and dispositions made by the said Oswald. The reason of the summons was qualified, that the said infestments and dispositions were made by Oswald, *sine consensu tutorum aut curatorum*; and his father, who was at that time his lawful administrator, he being in the mean time *pupillus et minor annis*; and so he pursued not *via restitutionis in integrum et juxta ordinaria via*; but desired the infestment to be declared null and of no effect. It was first *alleged* by the defender, That the pursuer, as cessioner and assignee to a minor, could have no action to pursue, because that all the privileges and benefits which of the law are granted to minors, are all personal, *et non egrediuntur persona minoris saltem ejus hæredis et universalis successoris, et nullo pacto potuit minor transferre in singularem successorem*. To the which was *answered*, That the reason of the summons was not founded upon the privilege granted to the minor *restitutionis in integrum*; nor yet the assignation made to that effect; but the minor had made the said assignation to pursue *via ordinaria, et ubi minor communi auxilio et mero jure* *'manitus est, non debet ei tribui extraordinarium auxilium, prout in L. 16. D. De minoribus; ut in presenti casu,'* the foresaid pupil had made alienation without the consent of his father, being lawful administrator to him for the time, or not authorised by his tutors or curators, and the minor in this case used the privilege granted to him of the law, *per viam restitutionis in integrum*, but he might here, as if he had been major, make assignation of his action of reduction. It was *answered*, That he could never now be heard, *neque ordinaria neque extraordinaria via et modo*, because he had not only kept silence and ceased, *per spatium utilis quadrennii*, but also by the space of 20 or 24 years. It was