

No 2.

1565. November 27. BRYSON against SOMERVILLE.

A BOY, though *pubertati proximus*, was found not capable of committing spuilzie in order to-punishment.

Fol. Dic. v. I. p. 575. Maitland.

* * This case is No 20. p. 1703, *voce* BONA ET MALA FIDES.

No

A pupil cannot be imprisoned for his father's debt.

1577. December 16. JOHNSTON against ———.

THERE was one Johnston, pupil in Edinburgh, and a burghess, who was warded in Edinburgh conform to the use of burgh for his father's debt. He desired, by supplication, to be freed forth of ward, because he was pupil and minor within the age of 12 years, and the holding of him in ward stopped him to be brought up in virtue and knowledge, and *alleged* he was not able *in bonis mobilibus* to make payment, yet he had lands within burgh which might be appraised. It was *answered* thereto, His lands were his mother's in conjunct fee of the same; and notwithstanding he was minor 12 years, and was holden from the schools, yet *ex jure naturali neque minor neque quivis alius debet locupletari cum alterius jactura*. THE LORDS nevertheless decerned the minor to be freed of the ward; they followed the practise before of a minor being in ward who offered *cessionem bonorum*.

Fol. Dic. v. I. p. 575. Colvil, MS. p. 259.

No 4.

1582. November. HOME against HOME.

IT was *alleged* against the execution of letters of advocation, that the same was not sufficient, because it was made by a boy of eleven or twelve years of age, who could not be executor more than he could not be witness, *prout in L. 3. D. De testibus*. THE LORDS nevertheless found by interlocutor, that, because he was *pubertati proximus*, he ought to be witness into this case.

Fol. Dic. v. I. p. 575. Colvil, MS. p. 340.

No 5.

Personal execution for debt against a woman past 14 years of age was superseded.

1625. June 24. SOMERVILLE against Her Father's CREDITORS.

JEAN SOMERVILLE daughter to umquhilè Samuel Somerville burghess of Edinburgh, being charged to pay a sum, wherein her said umquhile father was cautioner for Patrick Somerville, which Patrick was brother to her father, and tutor to her, after her father's decease; and which Patrick becoming bankrupt,

the said Jean being charged to pay, she suspends, and desires, seeing she is a minor, and that her father was only a cautioner for that principal debtor, who sinsyne became her tutor ; and so seeing she is distrest for her tutor's debt, therefore that she might be free of any personal execution to be used against her by caption, or warding of her person during her minority. THE LORDS superseded all personal execution of caption and warding of the person of the said Jean, for the space of a year after this date ; after the expiring whereof, they would consider, if any further prorogation should be granted, but prejudice of all other lawful execution against her goods and lands ; this woman was past 14 years of age.

Act. *Cunninghame.*

Alt. _____

Clerk, *Hay.**Durie, p. 129.*

No 5.

1628. *January 9.*AITKEN *against* HEWAT.

IN an exhibition of evidents, the LORDS found no process against John Hewat, who was convened as haver of the evidents, because it was alleged that he was within ten years of age, and so could not be called as haver.

Fol. Dic. v. 1. p. 575. Kerse, MS. fol. 186.

No 6.

. Spottiswood reports this case :

IN the action pursued by Aitkin against Mr Peter Ewart, the defender having raised an incident for recovery of some writs that were in the keeping and custody of umquhile Alexander Mowat, and now were in the hands of John Mowat his eldest lawful son, the LORDS would not sustain the incident against John Mowat, because he was a pupil within the age of 12 years, for it was thought that a pupil could not be convened as haver, seeing he had not himself (so to say) not being *sui potens*, and it was holden *pro confesso*, that a pupil could not *inchoare possessionem rei alienæ* ; but the question was, whether the pupil might continue his father's possession (as was in this case), and so might be convened as haver of any writs which were in his father's hands the time of his decease ; which sundry of the Lords thought might be, because otherwise it might be prejudicial to them that had writs or evidents lying in other men's hands. Yet the most part thought a pupil could not *teneri de facto non magis alieno quam proprio*, unless he were heir to his father ; or if he have tutors, they may be convened *nomine tutorio* as havers, and not the pupil.

Spottiswood, (MINORS AND PUPILS.) p. 211.