No 172. 1789. *June* 16. M'DONALD *against* ——.

IN general lesion is presumed when a minor borrows money, and it is therefore incumbent on the lender to prove, that it was *in rem versa*; but the Court thought, that where a minor carries on a trade, or exercises a profession, lesion is not presumed, but must be proved by the minor.

It was found in the same case, that the minor, though carrying on business, was privileged against prescripton. *See* APPENDIX.

Fol. Dic. v. 4. *p.* 5.

SECT. XI.

Quadrennium utile.

1626. *July* 20. BARON *against* HARVIE.

No 173.

GEORGE BARON having recovered sentence and decreet against Gilbert Harvie, grand-child, and lawfully charged to enter heir to his umquhile grand-father, Robert Watson; Harvie raised suspension, and also intented reduction of that decreet, as being given for non-compearance, and because he was minor the time of the giving of it, whereby he is much hurt by making him heir to his grandfather, of whom he had no benefit, and therefore he should be restored *in integrum, rebus adhuc salvis et integris*. *Excepted*, That his reduction was not intented *intra annos utiles*, and so not *debito tempore*, he being past twenty-five years. *Replied*, That he did it so soon as it came to his knowledge. THE LORDS sustained the summons, and reponed him yet to produce a lawful renunciation, *cum non sese immiscuisset bonis avitis*, neither had any thing followed upon that decreet, neither comprising or poinding.

Fol. Dic. v. 1. *p.* 586. *Spottiswood*, (RESTITUTIO IN INTEGRUM.) *p.* 299.

*** Durie reports this case.

IN a reduction pursued at the instance of one Harvie against George Baron of Kinaird, who had recovered decreet against the said Harvie, as lawfully charged to enter heir to his umquhile goodsir on the mother's side, viz. one Watson, who was obliged to relieve the said George Baron's father of some monies, which his said umquhile father had paid as cautioner for the said Watson, to the said Watson's creditor; this decreet for repayment of the said sums being so recovered at the instance of the said George Baron, against the said Gilbert Har-

vie, as charged to enter heir to the said Watson, whose daughter and only bairn was mother to the said Harvie, and the said decreet being only given against him *eo nomine*, as charged to enter heir, the same was desired to be reduced, because he offered to renounce to be heir to his umquhile goodsir *rebus integris*, he never having meddled with any thing that might constitute him to be heir to him; and the party who had obtained the said decreet contending, that after the giving of that sentence against him, as lawfully charged to enter heir, which was given against him in *anno* 1610, by the space of sixteen years since, during the which space he had done nothing to oppone against the said sentence, nor ever offered to renounce to be heir, which albeit he had immediately offered after the sentence, could not be received, far less now after so long a time; therefore, that his sentence ought to have effect, and the party could not be suffered to renounce, specially he being now major, before the intenting of his reduction; the LORDS found, that albeit the sentence had been given against a major, yet that he might be heard to renounce to be heir; which renunciation they found ought to be received, *etiam post sententiam* given against the party only, as lawfully charged to enter heir, seeing that renunciation was offered *rebus integris*, nothing being otherwise alleged, either of the reducer's intromission, or of any other deed which might make him heir, except the said charge, which they found in a reduction might be elided by the said renunciation, to elide the foresaid sentence given upon the said charge only, and noways offered to be maintained by any other deed of the party, whereby he might be found heir; and this was found, for this end only, to take away all personal execution against the reducer, but not to stay any real execution for comprising or adjudication to the creditor, or any other real execution upon the goods, or lands, or debts, which the said party charged to enter heir might acclaim by the goodsir, who was debtor, from the right whereof, they found this creditor ought not to be debarred, nor he prejudged therein by the said renunciation, and by reduction of the said sentence; for this was only to take away the personal execution, which the LORDS found were great injustice if it should strike against him, because he was charged to enter heir, and omitted to renounce before the sentence, that therefore this omission (which was desired to be supplied in this reduction) should make him personally liable for all his goodsire's debts, of whom he had never received benefit; and therefore, because he descended of his blood, that he should be subject to pay his debts, there being no other adminicle but the said charge; and the recoverer of the sentence being now no otherways prejudged nor damnified by this renunciation to be heir, after the sentence, than if it had been made before the the same, and it appears most just that he should be suffered to renounce; but I think of reason, that he ought to refund what has been expended by the obtainer of the sentence, in all the acts and dependencies of the process, since the time that he ought to have renounced, and that he omitted

No 173.

No 173. to do it, for the party has debursed the same necessarily in his default, and seeing he is reponed, it ought to be *rebus integris* for either party, and his omission ought not to hurt the other party; and that he ought to be reponed, it is clear by this, that one who has compeared in judgment, and being convened as charged to enter heir, and then renouncing, yet thereafter satisfying the party who had comprised, or gotten adjudication, he will be reponed notwithstanding of his renunciation, far more where there is only a naked charge, and neither renunciation made, nor comprising, nor adjudication. Vid. Craig in lib. 3. fol. 298., and I. C. Renunciatio si a suos fiat dicitur abstentio, si ab extraneis repudiatio, quam nos indistincte repudiationem dicimus, sed l. 4. Cod De Repud. hæreditas semel renunciata amplius adiri nequit.

The same decision was again done upon the 21st of December 1627, in a reduction betwixt Campbell *contra* Doctor Ross, and the reducer, who was reponed, was ordained to pay L. 50 for the other parties' charges, who had obtained the decreet against the party, as charged to enter heir.

Clerk, *Gibson.*

Durie, p. 221.

1628. *March* 14. M'MATH *against* BARON of Broughton.

No 174.
A minor succeeding to a minor, who died during the *quadrennium utile*, has not only all his own minority, but as much of the *quadrennium utile* as remained to his predecessor, to reduce any deeds done by his predecessor in his minority.

IN a suspension, M'Math *contra* Baron of Broughton, an heritable contract made by the Baron of Broughton's father, for infefting of his creditor in an yearly annualrent, for the principal sum addebted by him to his creditor, being comprised by Janet M'Math, assignee to the creditor, for satisfying of a certain sum owing to her, and conform to the clause of requisition contained in that contract, she having charged and required this Baron, as heir to his father, in whom that contract was transferred, as heir to his father contractor, which being suspended upon this reason, that his father contractor was minor the time of the contract, and died before the expiring of the *Quadriennium utile*, after his complete age of 21 years, and this suspender succeeding to him, being yet minor, at the least the *anni utiles* after his majority not being expired, he had revocated, and intented reduction thereof upon minority and lesion, the LORDS found, as agrees with the civil law *De temporib. in integr. restitut. C. lib.* 2. *tit.* 53, That a minor succeeding to a major, who had passed and lived while he passed the age of 21 years, but died before the expiring of *anni utiles*, had the benefit of restitution competent to him, during the whole years of his minority, after the completing whereof, the benefit foresaid lasted for no more years to him than was lasting unexpired at the decease of that major to whom he succeeded; and that the whole years after his majority of the *quadriennium continuum* endured not to him, but only so many as were unexpired when his