

1697. December 28.

MARQUIS OF MONTROSE and JOHN BUCHANNAN of Arrnprior *against* LIVINGSTON of Kirkland.

No 183.

A minor of 17 bought timber in conjunction with his father.

In a reduction upon minority and lesion, the defender was assoiized, the reduction not having been executed *intra annos utiles*, and there having been homologation.

It was anent a bond of L. 10,000 given by Kirkland and his father, as the price of a wood bought by them; of which bond young Kirkland raised a reduction upon minority and lesion, that he was then but 17, and his father's subscribing with him was no authorising him as a legal curator, but was *in rem suam*, and so *ipso jure* null, as was found M'Kenzie against Fairholm, No 23. p. 5639. & No 72. p. 8959. *Answered*, He can never reduce this deed on minority, because he was sufficiently authorised by his father, as administrator of law; neither is this like Sir George M'Kenzie's case, which was becoming cautioner for his father in a sum of money; but this is a bargain of trade, and in law *minor mercaturam agens non restituitur*. *2do*, He has not revoked, at least has not raised his reduction *intra annos utiles*. *3tio*, He has homologated the bond since his majority, by assigning the bargain of timber to one Smith. *Replied*, That this case needed no revocation, at least there was no necessity that reduction should be raised and execute thereon *intra quadriennium utile*; and as for the homologations, they never import where the deed can be ascribed to any other cause; and it was so found, Farquhar of Tonley *contra* Gordon, No 65. p. 5685.; where one's pursuing for relief of a debt did not debar him from quarrelling the bond; and sicklike, Moodie *contra* Macintosh, No 72. p. 5693.; the heritor's allowing the annualrents of a sum borrowed by him in his minority to his tenant, was found no such homologation of the bond, but that he might insit to have it reduced upon minority. THE LORDS sustained the answers, and assoiized from the reduction upon minority, both in respect of the want of an executed reduction *intra annos utiles*, and on the homologations; and some of the Lords were clear on the first head, that he was sufficiently authorised.

*Fol. Dic. v. I. p. 586. Fountainball, v. I. p. 805.*

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## S E C T. XII.

Whether recourse against curators bars reduction.—Whether reduction takes effect *ab initio* or only from decree.

1631. January 25. HOUSTON *against* MAXWELL.

No 184.

A GIRL 14 years of age at most, having sold her land without the authority of a Judge, the disposition was reduced from the beginning, and not from the

time of litiscontestation, only as the defender insisted; but here the disposition was understood to be *ipso jure* null. No 184.

*Fol. Dic. v. 1. p. 586. Durie. Auchinleck.*

\*\*\* This case is No 109. p. 8986.

1637. March 7. VERNOCK against HAMILTON. No 185.

THOUGH curators may be bound *actione curatela* to make up the minor's loss, this does not bar the reduction *ex capite minorennitates et laesionis*.

*Fol. Dic. v. 1. p. 586. Durie.*

\*\*\* This case is No 75. p. 2214, *voce* CITATION.

\*\*\* Similar decisions were pronounced, 1st December 1638, Stuart against Stuart, No 138. p. 9008.; and 2d July 1667, Lord Blantyre against Walkinshaw, No 76. p. 2215.

1666. February 16. EARL of WINTON against COUNTESS of WINTON. No 186.

THE Earl of Winton pursues a reduction of an agreement made by his tutors and curators with my Lady, giving her a certain duty for her interest in his coal, as being minor and lesed, in so far as by her contract, she had only right to the fourth part of the coal in his property; now his coal for several years has been in his feuers' lands, by reservation in their rights. And also craved the bygones. It was *answered*, That *bona fide possessor facit fructus consumptos suos*; the Lady by the agreement could not count for the years' duty she had gotten. It was *answered*, That this holds not in the case of minority and lesion. It was *answered*, That albeit minority repones as to any principal right, yet not as to the fruits and accrescences *medio tempore*.

“THE LORDS reduced, but assoilzied the Lady from repetition.”

*Fol. Dic. v. 1. p. 586. Stair, v. 1. p. 357.*