

1681. *December.*

PETER ROGERS and DEVREON *against* BAILIE BAIRD of Saughtonhall.

No 160.

PETER ROGERS, merchant in Amsterdam, a Dutchman, having granted a factory to John Devreon his prentice, who was minor, to intromit with and discharge his debts; and the factor having by mistake given a discharge for more than he received, he pursued for restitution upon minority and lesion.

*Alleged* for the defender, That the pursuer was a merchant, and so to be looked on as a major.

*Answered*, The stating of accounts is not properly *res mercatoria*. *2do*, A factor who was major could not without an onerous cause discharge the constituent's debt, *multo minus* the minor, who was a stranger.

THE LORDS reponed the minor, he proving lesion.

*Harcarse*, (MINORITY.) No 700. p. 197.

1682. *March.* JAMES CRAICK *against* JOHN MAXWELL.

No 161.

In a pursuit against a minor for his father's possession for several years, a probation by witnesses being led, the LORDS having decerned for the several years pursued for, viz. the years 1663, 1664, 1665; and the decret being assigned to the Lord Queensberry, there was a reduction raised upon minority and lesion, especially considering that the defunct died in 1662; the LORDS of consent restricted the decret to the year 1662, but would not reduce as to some other points, the cedent being sufficiently solvent, and the said cedent being now insisted against for repetition, in so far as he was lesed by the first decret.

*Alleged*, That the decret proceeding upon the advising of the depositions of witnesses, and upon compearance, it is not allowable to reconsider them.

*Answered*, Why may not the Lords re-consider witnesses as well as oaths and writs?

THE LORDS inclined to recommend it to one of their number to inspect the depositions, to see if there was a clear and obvious mistake of these and the interlocutor, and if it was so, they inclined to give some remedy, as they did in Bargeny's case *contra* Pinkell, (See APPENDIX.) and Elibabeth Pitillo *contra* Stark of Killermouth, (See APPENDIX.) where, in both cases, the decret was turned into a libel, though both parties were major, and a new probation led.

*November 1682.*—Thereafter the pursuer having insisted for damages he sustained by that decret which the Lords would not reduce upon minority, in respect a comprising had followed thereon, which was disposed to a singular successor for onerous causes before intenting of the reduction; and the defender was solvent;

Although the Lords would not reduce upon minority a decree, upon which a comprising had followed, and been disposed to a singular successor; yet they appointed the defender to refund to the minor so much as he would have saved, had he been restored *in integrum* against the decree.

No 161. THE LORDS decerned the defender to refund to the minor so much as he would have saved, had he been restored *in integrum* against the said decret.

*Harcarse, (MINORITY.) No 701. p. 197.*

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No 162.

1682. *March.* MR RUTHVEN *against* SIR ALEXANDER HOPE of Carse's SON.

A MINOR being pursued for payment of his predecessor's debt, to whom he was served heir, he revoked, and raised reduction of the service, and craved he might be free of personal execution.

*Alleged* for the defender, The pursuer cannot be heard to reduce the service, without restoring the rents intromitted with by him and his curators since his entry.

*Answered,* Those rents were expended in the payment of debts.

THE LORDS assolizied the defender in respect of the restitution; and here the minor was but eighteen years of age.

*Harcarse, (MINORITY.) No 702. p. 198.*

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No 163.

1685. *January.* MR JAMES WRIGHT *against* ISOBEL BROWN.

AN heiress who with curators had intromitted with the mails and duties of lands her father died in possession of, being married during her minority, and the husband having continued in possession several years after her majority, and she being pursued by the father's creditors on the passive title *gestio*, she revoked, and raised reduction *intra annos utiles*.

*Alleged* for the creditors, That she could not be restored, or allowed to renounce, till her intromissions and her husband's were refunded to the creditors.

*Answered,* The husband's intromission could not be charged upon her; but he must answer for it himself.

*Replied,* As mails and duties fall under an apparent heir's testament *jure apparentiæ*, so the husband's *jus mariti* is a legal assignation, equivalent to a voluntary right from the wife, and must be purged as her deed before she be restored.

THE LORDS found the reply relevant.

*Harcarse, (MINORITY.) No 711. p. 201.*

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No 164.

1697. *November 11.* HENDERSON *against* LAFREIS.

IN a reduction of a bond upon minority and lesion, it being *objcted* that the minor, at granting, was a writer, and attendant about the session, and therefore