

No 165. THE LORDS found, That the pursuer cannot be restored upon the head of minority and lesion, unless he restore the whole rents of the estate intromitted, or that might have been intromitted with by his tutors and curators.

*Forbes, p. 284.*

1711. *January 17.*

THOMAS DUNDAS, Merchant, and one of the Bailies of Edinburgh, *against* JOHN ALLAN, Writer there.

No 166.

A bill accepted by a minor without consent of his father, his administrator-in-law, for merchant goods sold to another, found reducible upon minority and lesion, altho' the sum was small, and the acceptor was a writer doing business for others, and paid part of it during his minority.

BAILIE DUNDAS having obtained a decret before the Bailies of Edinburgh, against John Allan, for L. 34 : 12s., as the remains of L. 47 : 5 : 6 Scots, contained in a bill accepted by him, payable to the Bailie, John Allan suspended and raised reduction upon minority and lesion, in so far as the bill was accepted by him when minor, without consent of his father, his administrator of law, as a cautionary security for the price of goods furnished not to himself, but to the Lady Cousland.

*Answered* for the charger, The reason of suspension and reduction ought to be repelled; Because, *1mo*, The subject of this debate is so very small, that no such lesion could thence arise, as deserves the extraordinary remedy of restitution *ex capite minorennitatis*, which must be enorm, February 14. 1677, the Duchess of Buccleugh *contra* Earl of Tweeddale, No 8. p. 2369. For *prator non curat de minimis*, and such an extraordinary cure is not to be applied to every trifling case. *2do*, The suspender was a writer versant in business, and so presumed more capable to deceive, than to be deceived. *3tio*, The suspender entered in payment after he was forisfamiliated by being married, and living separately from his father; which, by the civil law, was such an homologation as obliged one to pay debt contracted by him while *in familia paterna*, notwithstanding of *Senatus-consultum Macedonianum*, L. 7. § 13. *et ult. D. Ad Senatus-consultum Maced.*

*Duplied* for the suspender, *1mo*, The smallness of the debt cannot influence the decision, seeing quality, and not the quantity, of the debt is to be considered; and what may seem a small matter to one, may be considerable to another. *2do*, Whatever might be pretended, had the suspenders engagement been in the business of his employment as a writer, yet his undertaking a cautionary for the price of merchandise sold to another, was palpable lesion. And so anxious have the Lords been to secure minors from prejudice by rash cautionary, that a bond signed by a minor as cautioner, and his father as principal, was found null *quoad* the minor, though he was therein designed student of law, and afterwards proved an eminent lawyer, December 7. 1666, Mackenzie *contra* Fairholm, No 72. p. 8959; *July 25. 1667, p. 8960.* Nor, *3tio*, Can the suspender's paying part of the sum charged for be any homologation to fix him, since the partial payment was made during his minority; and he is

entitled to repetition *condictione indebiti*. Law doth not distinguish between minors married and unmarried, seeing marriage doth not always bring prudence along. And if the suspender be forisfamiliated, he is so without a portion, having got nothing to this day from his father, as a separate mean of subsistence by himself.

THE LORDS sustained the reason of reduction upon minority and lesion.

*Fol. Dic. v. 1. p. 585. Forbes, p. 477.*

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No 166.

1724. July.

WALL against BROWNLEE.

A minor having become signed cautioner to a deed without consent of curators, the LORDS sustained the nullity, though it was offered to be proved, that at the time of signing, he was habit and repute major, kept shop, was married, and had public trade for some time before he became cautioner. See APPENDIX.

*Fol. Dic. v. 1. p. 585.*

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No 167.

1731. January 15.

CAMPBELL against LORD LOVAT.

A bond granted by a minor, without consent of his father, administrator-in-law, was found void and null, though, at that time, he was *majorennitati proximus*, and had a commission in the army. See APPENDIX.

*Fol. Dic. v. 1. p. 585.*

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No 168.

1732. July 5.

CRAIG against GRANT.

A bill being challenged as granted in minority, the LORDS found it relevant to sustain the bill, that the acceptor was bred a wright, and was trading at the time of accepting it. For drawing and accepting of bills of exchange is of itself a branch of trade. The money must be presumed advanced *in artis suæ vel mercaturæ exercitio*. If this presumption be not sustained, a minor merchant cannot deal otherwise than by ready money, which, in effect, is saying, a minor cannot be a merchant. See APPENDIX.

*Fol. Dic. v. 1. p. 585.*

No 169.