1782. *August* 1. JOHN KIRKMAN *against* JOSEPH PYM.

MINOR.

The Supreme Court would not authorise a debtor to pay his debt to a minor not having curators.

[*Fac. Coll. IX.* 99 ; *Dict.* 8977.]

BRAXFIELD. If a minor without curators may come to a court of law, and receive money from debtors, the consequence will be dangerous indeed. The civil law lays it down, that one may pay safely *auctore prætore*: and so he may, for then payment will not be exacted a second time. But it remains to consider when the judge ought to authorise such payment.

MONBODDO. This might be a good system of law, if we had power to make law; but I do not see that the Court can say to a debtor, We will authorise you to keep back the money from a minor without curators.

HAILES. In extraordinary cases, the judges might possibly be authorised to invent extraordinary remedies; but there is nothing extraordinary here. The minor may, when he pleases, receive his money, by the simple act of choosing curators, who will concur with him in granting a discharge. This he avoids doing: and, merely to save a very little trouble or delay, he insists for a determination which might be of dangerous precedent.

GARDENSTON. I have certainly been in a mistake if a minor without curators may not do every thing that majors can do: if you do not allow a minor to uplift money, will you allow him to levy rents or receive interest?

PRESIDENT. As to rents and interests, they are out of the question; for the levying and receiving them are acts of ordinary administration: but here the question is as to principal sums. I do not see that the Court can interfere; and, indeed, *why* should we interfere when there may be a danger to the minor, and when he may, without danger, act by his curators?

BRAXFIELD. In the civil law, a man does not pay safely to a minor, if he pays voluntarily: could it be the meaning of that law that a minor should have the power of taking decreet, *causa non cognita?*

MONBODDO. If that be the Roman law, I have forgot it. A man, by that law, might have paid voluntarily to a minor, without curators, and would have been perfectly safe in so doing.

KAIMES. The judges of the Court of Session are the guardians of all minors. A minor wishes to sell his estate; he may do it, but with risk to the purchaser: the purchaser hesitates in paying; will the Court blindly interpose, and ordain the money to be paid, although there should be a certainty of its being to be instantly squandered?

On the 1st August 1782, "The Lords found that the Court ought not to interpose to authorise payment to Kirkman, a minor without curators; but remitted to the Ordinary to hear parties on the offer of finding security."

Act. R. Cullen. *Alt.* H. Erskine.
Reporter, Elliock.
Diss. Stonefield, Gardenston, Monboddo.

1782. *August* 8. Douglas Heron and Company *against* John and Hugh Parker.

COMPETITION.

Disponees in security with the disponer's personal creditors, who had executed a poinding of unripe crops.

[*Fac. Coll. IX.* 135; *Dict.* 2868.]

Braxfield. It is not much disputed, that, in a poinding of the ground, there would be a right to the crop; but it is said that this is a right of annualrent. It is an infeftment of annualrent, and also gives a disposition to the lands themselves, and so a poinding of the ground is competeut. The real creditor, in such a case, is preferable to the personal. In the case of *Dr Webster*, it was found that an infefter in annualrent might come in and claim a preference over a personal creditor as to rents of tenants. I do not see what difference it makes that the heritor himself, and not the tenants, is in possession. It is admitted by the respondents, that there could be no poinding of the ground, because no rent was due. This of itself shows that the creditor-infefter had a right to sequestrate.

Gardenston. I found my judgment on this simple proposition, that an infeftment in security goes to rents, but not to crops. A man may, by industry, make the produce of the ground ten times the value of the rent.

Kaimes. There is a material difference between the tenant and the proprietor. For the tenant is not debtor, but the proprietor is.

Monboddo. A poinding of the ground could not take place, because no interest was due. The creditor-proprietor under reversion had his remedy, both by affecting the rents and by removing the reverser, and entering into possession. This sequestration creates a hypothec, which a creditor cannot have.

Kennet. In the case of Dr *Webster* the only thing done was to prefer to the rents *in medio*.

On the 8th August 1782, "The Lords preferred Douglas Heron and Company;" altering their interlocutor of 2d March 1782.

Act. Ilay Campbell. *Alt.* A. Rolland.