

SECT. V.

Personal Faculties and Privileges, whether they may be founded on directly by Creditors.

1627. *March 7.* LO. BARGENIE *against His Sons.*

No 94.

A man, in his contract of marriage, during minority, bound himself to infest his children in his lands, upon which they used inhibition. After the inhibition, he granted heritable bonds to creditors; who were found entitled to reduce the contract of marriage upon minority and lesion.

LORD BARGENIE being obliged in his contract of marriage with Josias Stuart's daughter, to infest the bairns of that marriage in his lands, and inhibition being served thereupon, the Lord Bargenie having thereafter for certain sums borrowed from Sir John Hamilton of Lettrick, and some others, infest them in his lands, mentioned in the contract of marriage; the said Lord Bargenie, and creditors concurring with him, pursues his own sons gotten in that marriage, for production, reduction, and improbation of that inhibition, and to hear and see it found, that the said contract was made in his minority, and to his enorm hurt and lesion, and therefore ought to be reduced; which pursuit was moved with the concurrence of the said creditors, to the effect that the security made to them by the said Lord Bargenie, for their just debt, might be found a lawful title and right to them, and that thereby he might be made an able person, to give them satisfaction and security for the same. In this process, horning being produced against Bargenie's self, whereby he was deprived *ab agendo*, it was *alleged*, That the principal party being debared, who had the only interest to pursue this action of restitution, the process behoved to cease, in respect the rest of the pursuers were but pursuers by consequence, whose interest could not sustain the pursuit founded upon the right of the principal party, with whom he only concurs, his interest being taken away, as said is, and he being that person who only might seek restitution, as was desired. THE LORDS repelled the allegiance, and found the creditors foresaid might pursue this action, to the effect foresaid, notwithstanding that the principal pursuer was debared by horning. THE LORDS also in this process, after horning was taken up, sustained this action, for reduction of the contract of marriage, in so far as concerned the fee appointed to be given to the heir of that marriage, in respect it was a fee of the whole lands, which being granted by the father, being minor, to his enorm lesion, could not be sustained.

Alt. *Hope & Nicolson.*Alt. *Nicolson younger & Russel.*Clerk, *Gibson.*

In this process, the LORDS sustained the action, albeit it was moved by the father against his own sons, being pupils, whom by the law he ought to defend, being in his government and administration, and against whom it was alleged, he could move no action within the space of their pupilarity, during the which he ought to have defended them, as their administrator and tutor; which alle-

geance was also repelled, in respect the tutor is not secluded from his just and lawful pursuit, competent against the pupil; seeing before the intenting of his action, the pupils were furnished by lawful authority, and sentence of a lawful judge, with tutors to defend them, chosen and given them at the suit and desire of their goodsir, on the mother's side; which act of tutory was produced, and the process therefore sustained. *Partibus ut supra*. See TUTOR and PUPIL.

Fol. Dic. v. 2. p. 56. Durie, p. 56.

No 93.

1628. February 23. & June 26. DUNBAR against LESLY.

A MINOR suspended a decree upon minority and lesion, and with the bill gave in a renunciation to be heir, but died before discussing. The LORDS sustained the reasons of a reduction repeated with the suspension, at the instance of the cautioner therein, as if the minor had been still alive, though the privilege was pleaded to be personal.

Fol. Dic. v. 2. p. 79. Durie. Auchinleck. Spottiswood.

*** This case is No 15. p. 5392. *voce* HEIRSHIP MOVEABLES, and No 25. p. 8919. *voce* MINOR.

No 94.

1630. February 2. HAMILTON against SHARP.

If a minor once revoke *debito tempore* within the *quadriennium utile*, a singular successor in the lands may at any time thereafter raise a new reduction upon minority and lesion, of an infestment of annualrent granted by the minor upon these lands.

Fol. Dic. v. 2. p. 79. Durie.

*** This case is No 101. p. 8981. *voce* MINOR.

No 95.

1631. March 19. SCOT against DICKSON.

THE LORDS allowed a creditor to purge the failzie incurred upon a *pactum legis commissoriae in pignoribus*, by payment of the money at the bar, as his debtor the reverser himself might have done.

Fol. Dic. v. 2. p. 80. Durie.

*** This case is No 40. p. 7203. *voce* IRRITANCY.

No 96.