

No 128. LORDS received by way of suspension, albeit she had not intended a reduction of that decret of registration.

*Fol. Dic. v. 1. p. 582. Spottiswood, (RESTITUTIO IN INTEGRUM.) p. 300.*

1631. June 11. TAILZIFER against DRUMMOND.

No 129.

A minor pursued as charged to enter heir, offered to instruct payment of the debt, but having failed to do so, when the term came to be circumvented, he was still allowed to give in a renunciation by him and his curators.

ONE Drummond being convened as lawfully charged to enter heir to Sir Alexander Drummond his father, for payment of a debt due by his father, at the instance of one Tailzifer in Edinburgh; and the minor compearing by his procurator, and alleging the debt to be paid, and litiscontestation being made therein, and a term assigned to him to prove the same; at the term of probation the pursuer calling the act, and desiring the term to be satisfied, the defender's procurators declared, that they would pass from that exception; and seeing the defender was convened only as lawfully charged to enter heir, he offered to produce a renunciation, subscribed by the minor and his curators, renouncing to be heir to him *rebus integris*, seeing he never had intromission. And the pursuer *replying*, that, *in hoc statu processus*, he cannot be heard to renounce, after proponing of a peremptor of payment, and after the term was past assigned to prove it; for he *alleged*, that that made *rem non integram*, and it were dangerous to rescind litiscontestation done *partibus comparentibus* upon such an offer; for albeit, after sentence against a party, as lawfully charged to enter heir, the LORDS in suspension will permit the said party to renounce, notwithstanding of the decret so given against him; yet it is not alike in this case, where there is an exception proponed and admitted, of payment of the debt, which *perimit totam causam*; the LORDS, notwithstanding of the act, found that the minor, *in hoc statu processus*, might be heard to renounce, for he might be heard, without all controversy, to reduce upon that reason, he being minor, and before sentence, at the first term, the Lords thought the minor might be reponed without further process; for a major, after sentence, is heard to renounce, by suspension of the decret given only against him as lawfully charged, albeit he compeared to renounce before, and did it not.

Act. *Cunninghame.*

Alt. *Primrose.*

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 582. Durie, p. 590.*

1633. November 19. GUTHRIE against HARDROPE.

No 130.

NINIAN GUTHRIE charges William Hardrope to enter heir to his father, being a pupil, and obtains decret against him as lawfully charged to enter heir. This decret is suspended, and another decret is obtained against the suspension. Ninian comprises the land pertaining to the said William, and obtains

himself entered by the superior. The pupil, after all this, is authorised by a factor-dative, and offers to renounce to be heir *re integra* in a suspension raised by his said tutor. It is *alleged* for the pursuer, That the renunciation made now could not take away his two decreets, and his comprising following thereupon.—THE LORDS found the minor might renounce, but the debts and comprising must stand valid, notwithstanding of the apparent heir's posterior renunciation.

No 130.

*Fol. Dic. v. 1. p. 582. Auchinleck, MS. p. 136.*

1687. December 7. TAYLORS in LEITH against DENNISTONES.

No 131.

A TUTOR having confirmed his pupils executors to their father, and having mispent the estate, they, after their pupillarity, raised reduction of the confirmation upon minority and lesion.

*Alleged* for the defender; There was no lesion by the confirmation, the testament being opulent, but only by the tutor's mal-administration, whereof the minor will get relief from the tutor's cautioner.

THE LORDS refused to reduce the confirmation if the estate confirmed exceeded the defunct's debt.

Thereafter, it being *alleged* and proven, that the defunct's debt was three times more than the inventory of the testament, the LORDS reduced the confirmation upon minority and lesion, and left the defender to recur against the tutor's cautioner in the confirmed testament, and his representatives; because, albeit executors are only liable *secundum vires*, the minors *qua* executors would be liable to actions, and put to charges.

*Harcarse, (MINORITY.) No 719. p. 203.*

1705. December 11.

JAMES MURRAY, Taylor in the Canongate, against The CHILDREN of the deceased PATRICK CHALMERS, Beltmaker in Edinburgh.

No 132.

IN the action at the instance of James Murray, taylor in the Canongate, against the Children of the deceased Patrick Chalmers, beltmaker in Edinburgh, the defenders being found liable for a debt of their father's, as subjected to the passive titles by their procurators proponing peremptory defences, and failing in the probation.—THE LORDS reponed them against the passive titles, in regard they were minors; because minors are not only restored *de juri communi* against contracts and obligations entered into by them when lesion appears, but even against judicial acts; Stair B. 1. T. 6. § 44. December 1. 1638, Stuart *contra*

Minors reponed against a presumptive passive title, inferred from their procurators proponing for them peremptory defences, and failing in the probation.