a paritate rationis, seeing *privilegia* are *stricta juris* and cannot be extended *de casu in casum, &c.*

This was reasoned. But how far a donation may be revoked by the granter either *ob ingratitudinem, injurias ei a donatario factas, supervenientiam liberorum,* or the like, (for unless the granter do it his heirs could not do it,) by our law I cannot determine: nor yet if *quærela inofficiosa* would with us be sustained if intended against a donation by children, or the nearest of kin, in so far as it defrauds them of their legitim or agnate's part.

Advocates' MS. No. 300, *folio* 124.

1672. *January* 16. Anent Redeemable Rights of Land.

It was questioned, a man having a wadset or hypothecation in lands redeemable upon such a sum, or a disposition of lands for relief of such particular cautionaries wherein he stands engaged for the disponer, as are therein named, without this clause, "and for relief of all other cautionaries wherein he either presently or thereafter happens to be bound for him," if other sums be owing him beside the sum contained in the wadset, or if he has paid other sums as cautioner, forby those enumerated in the bond of relief; whether he may be forced to renounce his wadset and disposition for relief, upon payment only of the sums in the wadset and the cautionaries mentioned in the bond of relief, or if *licet rem detinere et incumbere pignori* till the other personal debts for which he has no such real security be paid him. I imagine he could not detain the land with us, if the sums in his wadset or bond for relief were offered. But the Roman law makes a very rational distinction in this case, *qui debet pecuniam sub pignore, aliam vero summam eidem sine pignore nudo quippe chirographo,* the debtor cannot outloose the land or pledge, unless he pay both the sums; but this will not strike against another creditor of the debtor, or one who shall acquire his right *ex titulo singulari. Vide titulum C. Etiam ob chirographariam pecuniam pignus retineri posse. Vide supra, No.* 333, *Maisson* against *Rhind, January* 1672.

Advocates' MS. No. 301, *folio* 124.

1672. *January* 16. Anent Quadriennium utile.

It was questioned whether a man revoking a deed done by him in his minority *intra quadriennium utile,* must also raise his reduction of that deed, and end it before the elapsing of the said space, or if he may reduce these deeds at any time thereafter, if so be they were revoked within the twenty-fifth year? By our law, it seems that at least the reduction should be raised and called before the expiring of the said profitable years, but that it may be insisted on after: so Dury, 2*d February* 1630, *Hamilton* against *Sharp and others,* who cites *l. ult. C. Si major factus alienationem, &c.* for it. That a revocation should precede the

reduction, seems not of absolute necessity, seeing the reduction raised within the years sufficiently declares their intention. *Vide* Dury, 16*th November* 1630, *Murray* against *Cochrane;* 8*th July* 1642, *Inglish* against *Aitkit, in fine.*

Quæritur farther, a man dies before twenty-five without revoking some prejudicial deeds done by him in his minority, if his heir or any other who succeeds in his right may revoke these deeds done by his predecessor. Though restitution *in integrum ex capite minoritatis* seems to be *beneficium personale,* and so not competent to the heir where neglected by the minor then become major, though within the years allowed for revocation; yet our law following the road of the common law in *l.* 5. *C. de temporibus in integrum restitutionum,* if the heir who succeeds be major, it allows him what years remained of the *quadriennium utile* to his author, within which he may revoke and quarrel his deeds; and if the heir be minor, he not only has all the years of his own minority, but also the residue of that profitable time which remained to his predecessor. They found lately a revocation made *intra quadriennium utile* restores not, unless a reduction be also raised within that space, between Sir James Ramsay of Whythill and Maxwell. *Vide infra No.* 313, [1*st February* 1672.]

It deserves consideration, how far a minor's asserting himself to be major at the time he grants writs, will elide and remove him *exceptione doli mali* from craving restitution against these writs as done by him in his less age: and what it would operate, if he offer him to prove that the creditor knew him (at least as having been his tutor or relation should have known him) to be minor at that time, notwithstanding of his assertion, seeing he was not *deceptus;* at least *uterque erat in dolo. Vide Tit. C. Si minor se majorem dixerit. See* Dury *ult. February* 1637, *Weimes of Lathoker. Vide infra, No.* 328, [13*th February* 1672.]

Advocates' MS. No. 302, *folio* 125.

1672. *January* 20. LORD DRUMLANRICK *against* HIS VASSALS.

IN the improbation pursued at my Lord Drumlanrick's instance against his vassals, it was ALLEGED for one, That no certification could be granted against his writs, because he offered him to prove he had been in possession peaceably of the controverted lands by the space of forty years, and that by virtue of a right, and so has prescribed against this pursuer. ANSWERED, That forty years prescription, nor no other defence consisting *in facto,* and so cannot be instantly verified, can be obtruded to obstruct certification.

The Lords *in presentia* admitted certification, reserving to the defender to reduce upon the prescription.

Advocates' MS. No. 305, *folio* 126.