

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.