

cess is against a third party, though such process may occasionally affect their interest; because this would tend to make pleas endless. THE LORDS assoilzied from the reason of reduction.—See APPENDIX.

No 149.

*Fol. Dic. v. I. p. 584.*

1752. December 5.

JAMES CAMPBELL *against* REPRESENTATIVES of JAMES GRAHAM.

JAMES GRAHAM being incumbered with debts, sold his lands of Longbodholm, *anno* 1728, to James Jardine, who died before any part of the price was payable, leaving a widow and three infant children. There being no readiness on their part to pay the price, James Graham, pressed by his creditors, brought a declarator of irritancy of the minute of sale, which was allowed to pass in absence. This decret of declarator paved the way to a trust-disposition, granted by James Graham, *anno* 1730, in favour of his creditors. The trustees, by the powers contained in that disposition, sold the lands, *anno* 1732, to Edward Cutlar; and the purchaser, to clear the lands of incumbrances, brought a reduction and improbation, in which the Representatives of Jardine were called, and obtained a certification *anno* 1735.

No earlier than the 1750 did James Campbell, in the right of the Representatives of James Jardine, bring a process of reduction of the decret of declarator of irritancy of the minute of sale betwixt Graham and Jardine, as not only being in absence, but against an infant undefended; and concluding also against the trust-disposition, and all that followed upon it. The defence was principally laid upon the decret of certification obtained by Cutlar, the purchaser, against the Representatives of James Jardine; but which the Court did not regard; because, it was discovered, that the pursuer had at the time one of the doubles of the minute of sale in his possession. But, with regard to the reduction of the minute of sale, at Graham's instance, against the Representatives of Jardine, it was the opinion of the Court, that the decret, though against a pupil undefended, was still equal to a decret in absence; that, *quoad* a decret in absence, minority cannot enter into the question; because, a major may be reponed *quandocunque* against a decret in absence, upon paying expense and damage, and that a minor can have no stronger privilege; but that, in the present case, where Graham had sold the lands, trusting to his decret of reduction, though in absence, being the best security he could have for the time, it was impossible the minor could be reponed against the decret, when it was no longer in Graham's power to fulfil the minute, by disposing the lands to the minor. Upon this ground, "the LORDS sustained the defence, that the minute of sale was at an end by the decret of reduction, and by the after sale to Edward Cutlar, in consequence thereof."

No 150.

A minor cannot be reponed against a decret of reduction of a minute of sale, after the land is bought by a third party, on the faith of the reduction.

*Sel. Dec. No 27. p. 39.*