

No 173.

to do it, for the party has debursed the same necessarily in his default, and seeing he is reponed, it ought to be *rebus integris* for either party, and his omission ought not to hurt the other party; and that he ought to be reponed, it is clear by this, that one who has compeared in judgment, and being convened as charged to enter heir, and then renouncing, yet thereafter satisfying the party who had comprised, or gotten adjudication, he will be reponed notwithstanding of his renunciation, far more where there is only a naked charge, and neither renunciation made, nor comprising, nor adjudication. Vid. Craig in lib. 3. fol. 298., and I. C. *Renunciatio si a suos fiat dicitur abstentio, si ab extraneis repudiatio, quam nos indistincte repudiationem dicimus, sed l. 4. Cod De Repud. hæreditas semel renunciata amplius adiri nequit.*

The same decision was again done upon the 21st of December 1627, in a reduction betwixt Campbell *contra* Doctor Ross, and the reducer, who was reponed, was ordained to pay L. 50 for the other parties' charges, who had obtained the decret against the party, as charged to enter heir.

Clerk, Gibson.

Durie, p. 221.

1628. March 14. M'MATH *against* BARON of Broughton.

No 174.

A minor succeeding to a minor, who died during the *quadrennium utile*, has not only all his own minority, but as much of the *quadrennium utile* as remained to his predecessor, to reduce any deeds done by his predecessor in his minority.

IN a suspension, M'Math *contra* Baron of Broughton, an heritable contract made by the Baron of Broughton's father, for infesting of his creditor in an yearly annualrent, for the principal sum addebted by him to his creditor, being comprised by Janet M'Math, assignee to the creditor, for satisfying of a certain sum owing to her, and conform to the clause of requisition contained in that contract, she having charged and required this Baron, as heir to his father, in whom that contract was transferred, as heir to his father contractor, which being suspended upon this reason, that his father contractor was minor the time of the contract, and died before the expiring of the *Quadriennium utile*, after his complete age of 21 years, and this suspender succeeding to him, being yet minor, at the least the *anni utiles* after his majority not being expired, he had revoked, and intented reduction thereof upon minority and lesion, the LORDS found, as agrees with the civil law *De temporib. in integr. restitut. C. lib. 2. tit. 53.* That a minor succeeding to a major, who had passed and lived while he passed the age of 21 years, but died before the expiring of *anni utiles*, had the benefit of restitution competent to him, during the whole years of his minority, after the completing whereof, the benefit foresaid lasted for no more years to him than was lasting unexpired at the decease of that major to whom he succeeded; and that the whole years after his majority of the *quadriennium continuum* endured not to him, but only so many as were unexpired when his

predecessor died ; also it was found, that albeit the sum charged for and comprised, was more than the sum addebted to the compriser, yet that the comprising and charge for the whole was sustained, ay and while the compriser was completely paid of the sum for the which the comprising was deduced ; which being satisfied, the LORDS found the compriser could seek no more, and that her interest ceased, albeit the suspender remained obliged in much more, which would pertain to the first creditor, or others having the right thereof.

Act. *Hope & Stuart.*Alt. *Nicolson & Primrose.*Clerk, *Gibson.**Fol. Dic: v. i. p. 586. Durie, p. 361.*

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1630. July 30.

JOHNSTON *against* HOPE.

No 175.

A bond of borrowed money granted by Johnston being desired to be reduced, because it was granted by him, being minor, and to his lesion, and was revoked *intra annos utiles*, and the action foresaid of reduction intented thereupon ; and the defender *alleging*, that it was not reducible, because after his majority he had paid annualrent to the creditor for this sum, whereby he had ratified the same bond ; the LORDS found this allegiance relevant, for payment of the annualrent by him after he was major was found to be a ratification of the bond, which excluded all action of reduction upon minority and lesion, albeit the annualrent was paid for obedience of letters of horning upon that bond, which bore an obligation of annualrent, which the pursuer alleged he had necessity to obey, and that it was not a voluntary act, which was not respected, seeing he might have suspended the charges, which not being done, was a ratification of the bond.

Act. *Lawrie & Taylor.*Alt. *McGill & Gilmore.*Clerk, *Hay.**Durie, p. 537.*

1630. November 16.

MURRAY *against* COCHRAN.

IN a suspension of charges upon a bond of 40 merks made to Murray by one Cochran, upon reason of the debtor's minority the time of the subscribing of the bond, he being then within 18 years in his father's house, and subscribing with his umquhile father, with whom he is bound conjunctly and severally, and getting neither benefit of the money alleged borrowed, nor benefit by his father's decease, being a poor young man ; likeas, he has revoked that bond *debito tempore intra annos utiles*, in respect of his lesion ; this reason was not sustained to be received by way of suspension, albeit both betwixt poor parties and

No 176.

An indigent young man of 18 having signed a bond with his father, revoked *intra annos utiles*. By Durie's report, this was not sustained by way of suspension. By Auchinleck's, the contrary.