

geance was also repelled, in respect the tutor is not secluded from his just and lawful pursuit, competent against the pupil; seeing before the intenting of his action, the pupils were furnished by lawful authority, and sentence of a lawful judge, with tutors to defend them, chosen and given them at the suit and desire of their goodsir, on the mother's side; which act of tutory was produced, and the process therefore sustained. *Partibus ut supra*. See TUTOR and PUPIL.

Fol. Dic. v. 2. p. 56. Durie, p. 56.

No 93.

1628. February 23. & June 26. DUNBAR against LESLY.

A MINOR suspended a decree upon minority and lesion, and with the bill gave in a renunciation to be heir, but died before discussing. The LORDS sustained the reasons of a reduction repeated with the suspension, at the instance of the cautioner therein, as if the minor had been still alive, though the privilege was pleaded to be personal.

Fol. Dic. v. 2. p. 79. Durie. Auchinleck. Spottiswood.

*** This case is No 15. p. 5392. *voce* HEIRSHIP MOVEABLES, and No 25. p. 8919. *voce* MINOR.

No 94.

1630. February 2. HAMILTON against SHARP.

If a minor once revoke *debito tempore* within the *quadriennium utile*, a singular successor in the lands may at any time thereafter raise a new reduction upon minority and lesion, of an infestment of annualrent granted by the minor upon these lands.

Fol. Dic. v. 2. p. 79. Durie.

*** This case is No 101. p. 8981. *voce* MINOR.

No 95.

1631. March 19. SCOT against DICKSON.

THE LORDS allowed a creditor to purge the failzie incurred upon a *pactum legis commissoriae in pignoribus*, by payment of the money at the bar, as his debtor the reverser himself might have done.

Fol. Dic. v. 2. p. 80. Durie.

*** This case is No 40. p. 7203. *voce* IRRITANCY.

No 96.

No 96.

The like was decided with regard to other irritancies:—November 1686, Nisbet against Creditors of Dryburgh, No 83. p. 7260. *voce* IRRITANCY; and 29th December 1703, Earl of Southesk against Arnot, No 85. p. 7262. *IBIDEM*.

1666. February 20.

Lord SALTON *against* The Laird of PARK and ROTHIE MAY.

No 97.

A person interdicted having disposed lands, a creditor of his who had comprised the same lands, was found entitled to insist in a reduction *ex sapite inhibitionis*.

THE Lord Ochiltree having a disposition of the estate of Salton from the umquhile Lord Salton *in anno* 1612, disposed the same to Park, Gordon, Rothiemay, and others; this Lord Salton having granted a bond to Sir Archibald Stewart of Blackhall, he thereupon apprised all right that could be competent to the Lord Salton of that estate; which right being now retrocessed to the Lord Salton, he pursues reduction of the Lord Ochiltree's disposition, and of all these rights founded thereupon in consequence. The reason of reduction is founded upon an interdiction against the Lord Salton, disponer, before his disposition; and there having been a process formerly depending at the instance of umquhile Sir Archibald Stewart, and being transferred after his death, the Lords allowed the process to proceed upon the minute of transference, without extracting the decret of transference, which behoved to include the process and hail minutes, which could not be done for a long time; whereupon the Lord Salton, now insisting in the principal cause, it was *alleged, first*, No process till the principal cause were wakened; for, albeit the principal cause be transferred, yet it is but *in statu quo*, and therefore being sleeping, there can be no process till after the transference there be a wakening. THE LORDS repelled this allegiance, and found the transference sufficient without any wakening.——It was further *alleged* absolvitor, because the pursuer's title being an apprising, the defender has an anterior apprising, which does exclude the pursuer ay and while it be reduced or redeemed. It was *answered*, That the ground of this pursuit being a reduction upon interdiction, the interdiction cannot be directly apprised, but only the lands belonging to the person interdicted being apprised, all apprisers or other singular successors coming in the place of the heirs of the person interdicted may pursue on their rights, and thereupon reduce voluntary dispositions made contrary to the interdiction; which interdiction is not a right itself, but *medium impedimentum* exclusive of another right, as an inhibition; and as a first appriser cannot hinder a second appriser to make use of his right, except in prejudice of the first appriser, so he cannot hinder him to make use of the interdiction to take away a voluntary disposition but prejudice of the first appriser's apprising, as accords; and, in the same way, a second appriser or any creditor might pursue upon an interdiction or inhibition against a creditor.