

1676. June 20.

GALBRAITH *against* LESLY.

No 158.

THE LORDS found, That a bond being granted by two persons, conjunctly and severally, being merchants, and for the price of merchant ware, the same could not be questioned upon that pretence, that one of them was minor the time of the granting the same; it being offered to be proved, that he was then, and is since a trafficking merchant:

Sir David Falconer having reported the same, in order to his trial, when he was admitted a Lord of the Session.

Clerk, *Monro.*

Fol. Dic. v. 1. p. 584. Dirleton, No 360. p. 175.

* * Stair reports this case:

GEORGE GALBRAITH having charged Patrick Lesly for payment of a bond granted by him and James Balfour, acknowledging them to have received certain merchant ware from the charger, and obliging them conjunctly and severally to pay the same, Lesly suspends, and raiseth reduction upon minority and lesion, in so far as he had bound himself *in solidum*, whereas he should have been only bound for his half.—It was *answered*, That it is always an exception against minority, that the minor was then a trading merchant.—It was *replied*, That albeit a merchant *in re mercatoria* is not restored, yet in other things they enjoy the common privilege; but here the obliging *in solidum*, was not *res mercatoria*, but only the price and goodness of the ware.

THE LORDS found it relevant that the suspender was then a trading merchant, and found that the buying of ware in communion or society with other merchants, and receiving the ware jointly, was binding as *in re mercatoria*.

Stair, v. 2. p. 428.

* * This case is also reported by Gosford:

IN a reduction and suspension raised at Patrick Lesly's instance, who was charged upon a bond granted to Galbraith by the said Patrick and James Balfour, for a parcel of goods bought by them jointly as merchants, wherein they were bound conjunctly and severally, upon this reason, That he was minor when he subscribed, and at most could only be liable for his own half; it was *answered*, That he being actually a trafficking merchant, as being in society, could never reduce this bond granted for the price of goods delivered and received, as hath been the constant decision in such cases.—THE LORDS found, That the minor was not in the case of a cautioner, but being bound conjunctly and severally with one in society with him for a joint stock, was liable *in solidum*; and so repelled the reason upon minority and lesion.

Gosford, No 864. p. 845.