

because the disposition bears a sum equivalent to the value of the land. To the second, *Non relevat*. The pursuer answered, That the subscribing and acknowledging the receipt of money by a minor, cannot prove itself, but the minor is lesed in subscribing the same. The defender duplied, That he offered to prove by witnesses, that the price was truly paid, and profitably employed.

THE LORDS found not the second reason of reduction relevant, the authority of a Judge being only required to the alienation of lands made by tutors of their pupils' lands. See WITNESS.

Fol. Dic. v. 1. p. 579. Stair, v. 1. p. 411.

* * * Dirleton reports this case :

IN a reduction of a right and disposition of certain houses, being pursued *ex capite minoris ætatis*; it was alleged, That the disposition did bear 500 merks to be paid, and the defender was content to quit the right being paid of the sum.

It was found, that the allegiance was not relevant, unless he should offer to prove it really paid, and profitably employed for the use of the minor.

In this process the LORDS would not sustain the reason *per se*, unless lesion were joined and libelled, viz. that the lands were disposed *sine decreto judicis*.

1667. June 4.—IN the case Thomson *contra* Stevenson, the LORDS found, that the extract out of the kirk-session books, is not a sufficient probation of age to infer reduction *ex capite minoritatis*; but the case being *difficilis probationis* after a considerable time; they found, that *aliqualis probatio* ought to be received, with the adminicle foresaid. See PROOF.

Norvel.

Alt. Wallace.

Clerk, Hamilton.

Dirleton, No 61. p. 26. & No 72. p. 30.

* * * A similar decision was pronounced, 6th December 1699, Creditors of Clark against Gordon, No 69. p. 3668, *voce* ESCHEAT.

1704. January 19.

BANNATYNE against TROTTER.

CAPTAIN JOHN BANNATYNE having married Dr Robert Trotter's sister, and there being 500 merks of the tocher yet resting unpaid. the Doctor gives a bond to the said John for that sum in liferent, and to William Bannatyne (who was the son of the marriage) in fee. William grants an assignation of this sum to his father, but he was then minor. Afterwards, on some mistakes arising betwixt his father and him, he retires to the Doctor his uncle's house; and

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A minor granted an assignation of a sum to his father, and when major, he assigned it to another person, but neglected to

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 revoke the first assignation, judging it null, as in it his father was *auctor in rem suam*. The Lords found the first assignation not simply null, but only revocable and reduceable, and, as it had not been revoked within the *quadriennium utile*, they preferred the father.

being then major, and resolving to go abroad, he makes a second assignation to Margaret Trotter his cousin, the Doctor's daughter, and delivers it to the Doctor, as tutor and administrator of the law to her. John Bannatyne, the father, having transferred the debt to one Rae, he charges the Doctor for payment; who suspends, on this reason, that the first assignation was null, being granted by a minor wanting curators, in favour of his father, who was legal curator, and who could not authorise his son *in rem suam*, as was decided, Fairholm against Sir George M'Kenzie, No 72. p. 8959; and here William Bannatyne, after he became major, had made a second assignation, which was a tacit revocation of the first given by him in minority, and likewise was preferable (though posterior) as first intimated to the debtor, in so far as it was delivered to the Doctor for the use of Margaret his daughter, which delivery was equivalent to an intimation. *Answered*, Though the bond was taken to the son in fee, yet the money was originally the father's; and his son being *in familia* unforis-familiate, it must be reputed the father's; and so his *necessities* requiring it, *res devenit in alium casum*, especially where the bond bears an express clause, that the son should not uplift it without the father's consent, *ergo* neither could he assign it; likeas, the second assignation bears a quality and condition, that it shall be void and null if he return to Scotland; and the second right elicited from him, can never be reputed a tacit revocation of the first; for though this may hold in donations between man and wife, yet it is not so with double rights made first in minority, and then after it; for in that case express revocation is requisite, and a reduction *intra annos utiles*; neither of which is used here; and the case of Fairholm is *toto caelo* different; for there a father had caused his son, while minor, to bind cautioner for him; and it being objected he was not authorised, and it being replied, his father signed with him, the LORDS justly found he could not be author *in rem propriam*. *Replied*, The assignation taken by the father from his own son was *ipso jure* null, (not being conceived in a third person's name), and so needed neither revocation nor reduction *intra annos utiles*; and the father's taking assignation, was to defraud the son of all the means of livelihood, he having no other thing to lippen to; and the second assignation was an effectual revocation of the first; and when he returns, he shall be reponed to his own right. THE LORDS found the first assignation was not simply null, but only revocable and reducible; and seeing no reduction was raised within his *quadriennium utile* of 25 years, they preferred the first assignation made to the father before that made to Margaret Trotter.

Fol. Dic. v. 1. p. 579. Fountainhall, v. 2. p. 212.