

them, if they lay under a perpetual insecurity of annulling such bargains ; and therefore the civil law refuses minors restitution in such cases,---*L. 7, sect. 8, D. de Minor.* And, with us, minors merchandizing are never reponed, unless there appear evident fraud ; because merchandize is like *jactus retis* ; and such is the uncertainty of loss or gain, that it is impossible to fix a certain standard.

The Lords found no lesion to the minors, unless their tutors proved that the goods were so far underrated, that, laying aside her liferent, the prices were so low as she could not but make considerable profit by them. For the Lords thought, that, if the prices are either above or equal to the true worth of the goods, it was but reasonable to give her the liferent, to encourage her to accept them at such a high and exorbitant rate.

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1709. *June 23.* ANDERSON of STOBGORSE and OTHERS *against* NINIAN HILL of LAMBHILL.

NINIAN Hill of Lambhill being pursued at the instance of Anderson of Stobcorse and Others, his creditors, in a roup and sale of his estate, they give in a petition to the Lords, representing, that the process cannot be so suddenly brought to a close ; and that there are some woods and shaws in the said lands ready for cutting, and, if delayed, will prejudice their after growth, and are, in the mean time, embezzled by the common debtor ; and therefore craved the Lords' warrant to the Bailie of the regality of Glasgow, and to David Stobo the factor, to visit the same, and expose it to roup, upon intimation, at the market-cross and six adjacent parish kirks, that the money may be depositate for the use and behoof of the creditors, and the woods may not decay and perish in the meantime.

ANSWERED for Lambhill and others of his Creditors concurring with him,— That this is a most irregular and unjust demand ; *1mo*, Because though the estate be put under sequestration, yet they have never, to this hour, proven him to be bankrupt, though it is two years since the raising of their summons ; and it were a strange preposterous method to dispose on his property till that be proven : And it is false and calumnious that he is cutting his timber. *2do*, This is not in the case of a *sylva cædua* fit for cutting ; in so far as it is not so many years since it was last cut, and it is far from being come to maturity ; and, though it were, yet the season of cutting for this year is past. But, *Stio*, This is no wood, but the planting contigue to and lying round about the mansion-house, which the Lords never allow to be cut down : for, when it comes to be sold, that vastation would considerably diminish the price ; and it being a beneficial decorement, a buyer will give so much more on that account.

Some of the Lords were for ordaining the bailie of the regality to visit the wood, and report the condition of it,---that it would decay if not timely cut. But the plurality refused the desire of the bill simply, in regard the estate was not yet proven to be bankrupt. However, it had been fit that the Lords had inhibited the common debtor to meddle with it, who commonly cut their planting short-hand, to get a little money. But this was not done.

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