No 98.

1583. CRAIG *against* JOHN COCKBURN.

MR THOMAS CRAIG advocate being bound as cautioner in the sum of 1000 merks for one John Cockburn, obtained this bond transferred in John's son who was minor, and thereupon charged him to relieve him thereof. He suspended, and *alleged*, That the decreet of transferring was given against him for not compearance; likeas, now he offered to renounce *re integra*. *Replied*, In respect of the decreet standing, he could not be heard to say against it, but *via restitutionis in integrum, et via actionis*. *Duplied*, *Setentia lata adversus minorem indefensum est ipso jure nulla*, and he being presently content to renounce, he should not be put to a new action. THE LORDS found the decreet should stand until it were reduced.

Spottiswood, (MINORS AND PUPILS.) *p.* 212.

No 99.
A minor having alienated lands without consent of his curators, the Lords found, that, although he had been silent for many years after the *quadriennium utile* was expired, yet he might pursue *via ordinaria*, to get the alienation declared null *ab initio*, and that the circumscribing minors within the *quadriennium utile*, is only in case they need the *remedium extraordinarium* of a reduction.

1584. *January*. ROBERTSON *against* OSWALD.

THERE was one called Oswald, that had made one Robertson cessioner and assignee to an action of reduction, of certain infeftments and dispositions made by the said Oswald. The reason of the summons was qualified, that the said infeftments and dispositions were made by Oswald, *sine consensu tutorum aut curatorum*; and his father, who was at that time his lawful administrator, he being in the mean time *pupillus et minor annis*; and so he pursued not *via restitutionis in integrum et juxta ordinaria via*; but desired the infeftment to be declared null and of no effect. It was first *alleged* by the defender, That the pursuer, as cessioner and assignee to a minor, could have no action to pursue, because that all the privileges and benefits which of the law are granted to minors, are all personal, *et non egrediuntur persona minoris saltem ejus hæredis et universalis successoris, et nullo pacto potuit minor transferre in singularem successorem*. To the which was *answered*, That the reason of the summons was not founded upon the privilege granted to the minor *restitutionis in integrum*; nor yet the assignation made to that effect; but the minor had made the said assignation to pursue 'via ordinaria, et ubi minor communi auxilio et mero jure 'manitus est, non debet ei tribui extraordinarium auxilium, prout in L. 16. D. 'De minoribus; ut in presenti casu,' the foresaid pupil had made alienation without the consent of his father, being lawful administrator to him for the time, or not authorised by his tutors or curators, and the minor in this case used the privilege granted to him of the law, *per viam restitutionis in integrum*, but he might here, as if he had been major, make assignation of his action of reduction. It was *answered*, That he could never now be heard, *neque ordinaria neque extraordinaria via et modo*, because he had not only kept silence and ceased, *per spatium utilis quadrennii*, but also by the space of 20 or 24 years. It was

answered to this, ' quod tempus quadriennii non currit contra minorem nisi ' quando utitur privilegio et extraordinario auxilio,' and so the minor or his assignee could never here be debarred from the pursuit of his action more than he were any other person. THE LORDS repelled the exception, and found that the minor had place here to make an assignee, notwithstanding of his taciturnity *per longum temporis spatium.* No 99.

Fol. Dic. v. 1. *p* 579. *Colvil, MS.p.* 395.

1587. *February.* HAMILTONS *against* HAMILTON.

No 100.
A bond granted by a minor without consent of curators, found *ipso jure* null; and, therefore, though no revocation was made *intra annos utiles*, the Court found, that he might still object to it.

MARGARET, Jeillis and Janet Hamiltons, daughters natural to umquhile John Hamilton, pursued John Hamilton, their brother, to hear and see a bond registered, wherein the said John being *minor annis*, was bound and obliged, with consent of his curator, to give to either of his sisters the fee of 500 merks. It was *alleged* against the registration of the same, that it was null of the law, and therefore ought not to be registered, because it was done the time of his minority without consent of his curators, ' ut in L. 3. Cod. De in integrum re-' stitutione minorum.' *Answered*, That they could not allege the nullity, because *lapso utili quadriennio. Answered*, That he needed not to make any revocation in respect of the foresaid law; and so was found by the LORDS.

Fol. Dic. v. 1. *p.* 579. *Colvil, MS. p.* 423.

1630. *February* 2. HAMILTON *against* SHARP, and Others.

No 101.
A reduction was pursued by a minor's successor, of an alienation made by the minor and his curator without the sentence of a judge. The Lords refused to sustain this reason of reduction, unless the pursuer would also allege lesion; and found also that this ought to be pursued within the *quadriennium utile.*

SIR JOHN HAMILTON intents a reduction against Mr John Sharp, John Inglis, and one Armour, for reducing at his instance as proprietor of the lands of Bargany, an infeftment public, anterior to his right of annualrent of L. 1000 out of these lands, granted to the Lord Ochiltree by the Laird of Bargany, and Josias Stuart his curator, for the cause expressed in the said infeftment. The reason was the minority of the disponer, and want of authority of the Judge Ordinary, viz. the Lords of Session, finding upon trial the alienation necessary, and for the good of the minor. Which reason the pursuer *alleged* to be relevant *quocunque tempore*, as well *post annos utiles minoris* as within the same, whenever it were pursued to reduce such alienations; and that as it was enough to the minor himself after the expiring of these years after his minority, so to his successors, to reduce upon that ground of wanting of a sentence of a Judge, albeit he qualified no lesion done thereby to the minor, seeing he alleged it to be a nullity of the law, and that the deed being null of the law, as is evident by the civil law *de alienationibus prædiorum minoris*, and that this case was different from the restitution of minors upon lesion, which requires pursuit to