

if he had sold it, and squandered the money; yet, as he happened to be still possessed thereof, he offered it back to the defender.

Answered for Lady Kinminity; It is not every transaction of a minor's that is liable to reduction, enorm lesion must always be joined; *e. g.* If he buys cloaths from a merchant, suitable to his rank and quality, he cannot reduce the obligation given for the price, on pretence that he could have got cloaths cheaper elsewhere. Now, considering the pursuer's rank and opulency, it was no extraordinary thing for him to wear a gold watch; more especially, as it is admitted, That at the time of the purchase, he had in view to make a present thereof to a young lady whom he was about to marry. And as to the value, it cost the defender the same money she sold it for; which is the more probable, as the common rate of these things are from L. 20 to L. 25 Sterling. Besides, there is no evidence that the watch now offered is the same specific one delivered to the pursuer.

Replied for Pronsie; It is contrary to the rules either of law or equity, to load him with a proof that the watch is the same he bought from the defender; because such a proof would be inexplicable, seeing those who allow themselves the liberty of dealing with minors, seldom or never call witnesses to their bargains. Neither does the comparison, from a minor's purchasing cloaths of a merchant, apply to the present question; for, if a merchant should fraudulently induce a minor to pay 30 shillings per yard for cloth not worth 15 shillings, there can be no doubt that he would be entitled to set aside the bargain on the same grounds that this transaction ought to be reduced.

THE LORDS, in respect the watch was produced, found no necessity that the pursuer prove the identity thereof.

C. Home, No 77. p. 129.

S E C T. X.

Relative to Land.

1623. February 27.

MASTER of JEDBURGH against ELLIOT.

In an action pursued by the Master of Jedburgh against one Elliot, for the violent profits of certain rooms, which were not *per expressum* contained in the decret of removing, but libelled in this action of violence to be parts and pertinents thereof; the defender compeared, and alleged them to be pertinents of his proper lands, heritably pertaining to him; and both the parties alleging pos-

No 633.

prove the identity, when the goods are offered back.

No 634.

In what manner competent to prove part and pertinent.

No 634.

session, as pertinents, the LORDS found, that witnesses should be examined for either of the parties, to prove how they and their authors possessed these rooms controverted, whether as pertinents of the pursuer's lands, contained in his decret of removing, or as the defender's proper lands; and, after the witnesses were examined for either party, they would consider what was expedient.— This was thereafter altered.

Act. Hope.

Alt. Nicolson.

Clerk, Gibson.

Durie, p. 53.

* * * Haddington reports this case :

THE Master of Jedburgh pursued Gilbert Elliot for the violent profits of certain lands, as parts and pertinents of the pursuer's lands of Fernlie. The defender *alleged*, That they were parts and pertinents of lands wherein he was infest, and in possession these 30 or 40 years. The defender *replied*, That Hector Turnbull of Stanlege, to whose right he succeeded, had wadset the lands to the defender, before which wadset, Stanlege, and his authors, had been in possession of the lands controverted 30 or 40 years, which possession, he who had received the wadset could not invert; and, therefore, the possession being equally qualified by both parties, the pursuer should have the prerogation of probation; which desire the Lords would not grant; but appointed both the parties to have equal number of witnesses, whereof the most part should be landed Gentlemen.

Haddington, MS. No 2789.

1626. December 15.

L. FOULIS *against* Lo. LOVAT.

No. 635.

That an infestment was granted for a particular cause, must be proved *scripto vel juramento.*

IN a declarator of the Laird of Foulis's liferent, pursued to the behoof of his Lady, compeared the Lord Lovat, as being infest by a public infestment in the lands, whereof the mails and duties were acclaimed by the donatar, in this action of special declarator; and, in respect thereof, *alleged*, That he ought to be preferred to the donatar. This allegiance was repelled, in respect of this underwritten reply, viz. That the pursuer offered to prove, that that infestment was granted to the Lord Lovat, to the effect, that thereby he might relieve himself of certain debts, wherein he was obliged to the Creditors of the Laird of Foulis; so that he ought to have intromitted, conform to his right, with the farms of the said lands, and profits thereof, and thereby satisfied the Creditors to whom he was bound, as said is, and which he might have done, if he had intromitted, (the said farms being of that avail, which would have defrayed the same;) whereas, by the contrary, he suffered the Laird of Foulis to retain, and keep the possession of the said lands, and to uplift all the duties thereof;