

1684 and 1685. JOHN THOMSON and WILLIAM LEGGAT *against* JAMES GIBB.

1684. *January 15.*—JOHN Thomson, tailor in Edinburgh, against James Gibb, maltman in Leith, reported by the Clerk-register. The Lords ordained this point to be heard in their own presence; whether one disposing lands with warrandice from his own facts and deeds, if his author's right of disposition be reduced upon minority and lesion, if the disponent will, at least, be liable to restore the price he got, and what shall be the import of such a warrandice. Craig, *Feud. lib. 2, Dieg. 4*, is very clear that he ought to restore the price; and there is a natural obligation upon me to recompense, *ubi res alterius apud me devenit sine causa*. See Stair's Institutions, tit. 8, Of Recompense; and Papon, in his Arrests, *lib. 11, tit. 4*, shows it was thus decided in the Parliament of Paris. *Vide 28th November 1685. Vol. I. Page 260.*

1685. *November 28.*—William Leggat, procurator before the bailies of Edinburgh, against James Gibb, maltman in Leith. This was a reduction of a tack *ex capite minorennitatis et læsionis*. ANSWERED,—It was profitable.—The probation being advised this day, it was contended, though the *impensæ* were never so *utiles* or *necessariæ*, yet I, the heritor, having prohibited you to repair, you was *in mala fide* to proceed.

REPLIED,—He might proceed here *domino prohibente*, because Gibb, the tackman, had also the heritable right disposed to him by John Thomson; and though there was a reduction of it depending on the same head of minority, yet it was a title good enough to sustain his necessary reparations, aye and while it was reduced. Which the Lords found relevant; and even allowed the posterior depursements, notwithstanding they were expended after citation and the protest taken by William Leggat, because it was proven they were profitable.

The words of the interlocutor were :—The Lords having considered the tack quarrelled, with the depositions of the witnesses adduced, *hinc inde*, for either party; the accounts of the building and reparations made by Gibb the defender, and approved by the curators, with the report of the tradesmen appointed to visit the work; they find there was no lesion to the minor by setting the said tack, and that the money waired out by the defender, in building and reparations, *viz.* not only the £1317 Scots first given out, but also the £326 last waired by the defender, were profitably expended for the advantage of the minor, the rent of the houses being considerably improvén thereby: and therefore assolyied from the reduction.

President Falconer having befriended James Gibb in this,

William Leggat procured a stop and a new hearing, on the 19th of December and repeated his reason of reduction against the three years' prorogation of the tack, on the account of James Gibb's additional expense of £326, because the minor was lesed, it not being profitable, and the defender was discharged to build these stables; and he had not the curator's warrant, as in the first depursements, and he would be much *lucratus* thereby: but the Lords refused to alter their former interlocutor. Then William insisted for reducing John Thomson's disposition, in regard a day was assigned to him to prove it was for

onerous causes, and *in rem versum* to the minor; (*vide* 15th January 1684;) and he had succumbed, and the term was circumduced against him, and the minority proven. ANSWERED,—James Gib was not concerned in this reduction, farther than that he gave John Thomson a bond for 700 merks, as the price of the lands disposed; and, seeing the land was evicted, the bond became null, *causa data causa non secuta*.

The Lords reduced the disposition, and declared the bond null; and ordained it, with a discharge, to be given up, and also the disposition to be given back.

Then William Leggat craved a visitation of the houses, to try what condition they are now in, that they may leave them in as good condition at the expiring of the tack; because they were so slightly built with cat and clay, that they would continue little longer than the space of the tack. ANSWERED,—There has been a visitation already, and this is not competent *hoc loco*, but at the end of the tack; and that all houses naturally, in process of time, are deteriorated.

The Lords found no necessity of appointing a visitation of the houses at this time; but declared the defender James Gib, at the expiring of the tack, shall be obliged to leave the houses in as good condition as other tenants use to do at their removal; but would not determine the manner thereof.

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1685. *December 2.* COMMISSARY MONRO, Petitioner.

THE Lords, on a bill, and his taking the test, re-admit Commissary Monro to be an advocate, being now pardoned for high treason and the conspiracy. This gave a general discontent to the advocates; for though the remission red-integrates, *yet nota inuritur, nec tollitur infamia, sed pœnæ tantum gratiam facit; l. 3, C. de Generali Abolit.* And the Lords should be more tender of the Faculty's reputation, by which most of themselves have risen, unless they were commanded to do it by superior powers.

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1685. *December 2.* JAMES LITHGOW *against* JAMES HAMILTON.

JAMES Lithgow, merchant, his charge on the indentures, against James Hamilton, was reported by HARCUS. The Lords found, he being bound prentice to Delchamp, a Frenchman, in the art of making paper, he was not obliged to stay, Delchamp having deserted; unless James Lithgow, the charger, will offer to prove, by his oath, that he was the person who truly indented with him, having only assumed Delchamp to be his partner, and that he alone entertained him in bed, board, and clothing, and was truly his master, and that Del-