

1687. July.

HARPER against HAMILTON.

No 35.

IN a pursuit at the instance of Harper against Henry Hamilton, for a sum in a bond by John Hamilton the defender's father, as principal, and himself as cautioner, expressly declared to be for shoes and boots to the defender,

Henry *alleged* minority and lesion, that he had raised reduction *ex eo capite*; *2do*, That the father could not authorise the pupil.

*Answered*; The goods were *in rem versum* to the minor, and he was forisfiliate.

THE LORDS found the answer relevant.

*Harcarse, (MINORITY.) No 717. p. 203.*

1692. December 9.

GRAY against IRVING.

No 36.

MR JAMES GRAY of Balgonie's process against Mr Richard Irving of Cairnfield, upon the protutory, was reported, anent three articles of the discharge. *1mo*, He craved allowance of L. 56 Scots of reparations wared on the house of Cairnfield, wherein he dwelt with the liferentrix, whom he had married; the LORDS found, this ought to be allowed, though liferenters ought to uphold their houses. *2do*, The aliment of the children. *Alleged* by the heir, That his estate being incumbered by debts, he was not bound to entertain the younger children, who had no portions; and the heir's estate being mean and low.—

*Answered*, The debts were then but personal, and no real diligence done for them; and the protutor having acquired the gift of the ward and marriage, he, upon the faith of that, had alimented the bairns; and being now found, by interlocutor, to accresce to the minor, he must have the gift *cum onere* of the aliment, and also pay the funerals of one of them whodied. THE LORDS found the heir liable, in respect he had the benefit of that gift, and that it was not presumable a stepfather would aliment them *ex pietate*; but referred to the auditor to modify the same more or less, as he found the estate; and refused Balgonie a conjunct probation of the way and manner they were alimented. Balgonie reclaimed much against these interlocutors. The third point was, the protutor craved allowance for some feu-duties he paid in 1664, for the year 1661 and 1662. *Alleged*, These are presumed to be allowed in the rents of these years 1661 and 1662, for which the protutor was not put to an account. But the LORDS found they behoved to come into the year 1664, unless they would offer to prove by Mr Richard the protutor's oath, (there being no other mean of probation now left,) that they were paid out of the rests of the years before his intromission and entry in 1664.

A minor acquired by his tutor a gift of ward and marriage. Found that he must take it *cum onere* of the aliment of younger children.

*Fountainhall, v. 1. p. 530.*