

No 144.

A minor being lesed *in facto*, by omitting to produce a contract in a reduction, the Lords restored him *contra rem judicatam*.

1697. January 14. JOHN ALEXANDER *against* PARK and ORD.

IT was a reduction of a certification, in an improbation of a minute of sale of a tenement of land, on these two reasons; *1mo*, Park was minor at the time of obtaining it, and has quarrelled it *intra annos utiles*; *2do*, You was *in mala fide* to crave certification against that minute, because it was in your hands, and you had made use of it by serving inhibition thereon. *Answered*, Minority is no ground of restitution *quoad* points *in jure*, as was found between the Marquis of Montrose and Cochran, (*See APPENDIX*). *2do*, Though I have a mutual contract in my hand, yet I may call for your double of it, and crave it to be reduced for not implement, or any other legal grounds. THE LORDS considered the minor was here lesed *in facto*, by omitting to produce the paper called for; and therefore law restored him in such cases *adversus sententiam et rem judicatam*. And as to the minute, it did not appear that there were two principles, and therefore they reponed the minor to this defence against the certification, that I offer to prove you had the writ called for, (and against which you took the certification,) in your own hand at the time, because as it was competent to me then, it was competent for me to propone it now.

Fol. Dic. v. 1. p. 583. Fountainhall, v. 1. p. 755.

No 145.

A minor craved restitution against a decree *in foro*, alleging iniquity in the interlocutors. Not reponed against defences, proponed and repelled, but the decree opened as to objections omitted either in fact or law.

1698. January 7. COUNTESS OF KINCARDINE *against* WILLIAM PURVES.

THE Countess obtained a decret against him *in foro*, on the passive titles, as representing Sir William, his granfather, for intromission with sundry wards and marriages, whereof the Earl of Kincardine, her husband, had a gift. Purveshall insisted on this reason of reduction, that I was *minor indefensus*, my curators not being legally cited, and though Advocates compeared and debated for me, and interlocutors *in jure* passed thereon, yet I was lesed, and the decret on that nullity must be open *in toto*, being before the late regulations, declaring nullities of decreets shall operate no farther than to redress the prejudice; and this must be a total nullity; for, though a minor compear by his procurators, yet if his curators be neither called, nor compearing, he is truly on the matter absent, they being absolutely necessary not only for advice and direction, but also *ad integrandam minoris personam*; and Dirleton, *voce* MINOR, p. 126 shews, in such cases, *minor non habet personam standi in judicio, et sententia contra eos indefensos lata, est ipso jure nulla*. *Answered*, *1mo*, He was not *indefensus*, for he compeared by Advocates, and debated, and received interlocutors *in jure* on the several points; likeas his father and uncles were cited, who were his curators; only the execution is in some particulars informal; and whatever effect this may have to repon a minor against omissions, yet it can