

by an adjudication led against him as lawfully charged, he cannot found on his minority, unless he represented.

DUPLIED,—The adjudication carried the privilege of founding on the minority to interrupt, as well as the minor himself had.

Though the cause was small, yet the point being somewhat intricate, the Lords ordained it to be heard in presence.

It was ALLEGED, That a liferentrix having possessed the lands for many years, the fiar could not interrupt during her life; and so, not being *valens agere*, the prescription could not run against him. *Vol. II. Page 77.*

1700. *January 5.* LORD PITMEDDEN and ALEXANDER SETON *against* The COUNTESS of DUMFERLINE and ALEXANDER AUCHINDACHY.

ARNISTON reported the Lord Pitmedden, and Alexander Seton his son, against the Countess of Dumferline, and Alexander Auchindachy, her chamberlain, for repetition of the rents uplifted by her since 1694; in regard, by a decret *in foro*, the Lords have preferred him to these rents.

ALLEGED for the said Alexander,—That he being the Countess's servant, any intromission he had was by her order, and he has counted to her, and obtained her discharge; which is sufficient to exoner him, whatever it may operate to make the lady restore; and, by law, *velle non creditur qui obsequitur imperio patris et domini*, l. 4. *D. de Reg. Jur.*; *et quoad ea quæ not habent atrocitatem facinoris ignoscitur servis qui dominis obtemperaverunt*, l. 157. *eod.*; *et damnum dat qui jubet dare, sed ejus nulla est culpa cui parere necesse fuit*, l. 169. *eod.* And, with us, servants acting by their master's command, *in civilibus*, obliges him, but not themselves; as was found, 17th November 1665, *Howison*; where a servant, giving a ticket for ware taken off for his master, was free of the price, unless he proved the servant applied it to some other use than his master's.

ANSWERED,—The Lords having put a factor on this estate, which was known both to the lady and Auchindachy her servant, they were *in mala fide*, the one to give, and the other to accept, of a contrary factory, in contempt of the Lords' authority: and it is offered to be proven, that he knew of the Lords putting in a factor, and threatened him that he might not intromit, and that the tenants might not pay him; which was a kind of *delictum*, in which he should not have obeyed his mistress. And the laws cited relate to Roman slaves, who had no will of their own; and, though obedience and obsequiousness be required of Christian servants, yet they must not obey in things contrary to the law.

The Lords considered, if creditors, at their own hands, might put in factors where they had already named for the behoof of the haill creditors, there should be nothing but confusion; therefore they found the factor in this case liable, from the time of intimation of the Lords' factory to him, or of his getting knowledge thereof any other manner of way; to be proven *scripto vel juramento*.

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