

himself entered by the superior. The pupil, after all this, is authorised by a factor-dative, and offers to renounce to be heir *re integra* in a suspension raised by his said tutor. It is *alleged* for the pursuer, That the renunciation made now could not take away his two decreets, and his comprising following thereupon.—THE LORDS found the minor might renounce, but the debts and comprising must stand valid, notwithstanding of the apparent heir's posterior renunciation.

No 130.

Fol. Dic. v. 1. p. 582. Auchinleck, MS. p. 136.

1687. December 7. TAYLORS in LEITH against DENNISTONES.

No 131.

A TUTOR having confirmed his pupils executors to their father, and having mispent the estate, they, after their pupillarity, raised reduction of the confirmation upon minority and lesion.

Alleged for the defender; There was no lesion by the confirmation, the testament being opulent, but only by the tutor's mal-administration, whereof the minor will get relief from the tutor's cautioner.

THE LORDS refused to reduce the confirmation if the estate confirmed exceeded the defunct's debt.

Thereafter, it being *alleged* and proven, that the defunct's debt was three times more than the inventory of the testament, the LORDS reduced the confirmation upon minority and lesion, and left the defender to recur against the tutor's cautioner in the confirmed testament, and his representatives; because, albeit executors are only liable *secundum vires*, the minors *qua* executors would be liable to actions, and put to charges.

Harcarse, (MINORITY.) No 719. p. 203.

1705. December 11.

JAMES MURRAY, Taylor in the Canongate, *against* The CHILDREN of the deceased PATRICK CHALMERS, Beltmaker in Edinburgh.

No 132.

IN the action at the instance of James Murray, taylor in the Canongate, *against* the Children of the deceased Patrick Chalmers, beltmaker in Edinburgh, the defenders being found liable for a debt of their father's, as subjected to the passive titles by their procurators proponing peremptory defences, and failing in the probation.—THE LORDS reponed them against the passive titles, in regard they were minors; because minors are not only restored *de juri communi* against contracts and obligations entered into by them when lesion appears, but even *against* judicial acts; Stair B. 1. T. 6. § 44. December 1. 1638, Stuart *contra*

Minors reponed against a presumptive passive title, inferred from their procurators proponing for them peremptory defences, and failing in the probation.

No 132. Steuart, No 138. p. 9008.; February 14. 1677, Duke and Dutchess of Buccleuch against The Earl of Tweeddale, No 8. p. 2369.

Fol. Dic. v. 1. p. 582. Forbes, p. 52.

* * Fountainhall reports this case :

JAMES MURRAY, taylor in the Canongate, against the Children of Patrick Chalmers, beltmaker in Edinburgh, and his relict. Patrick being debtor to the said James in L. 100 Sterling by bond, he pursues his relict and children on the passive titles, for payment ; there is compearance made for them by an advocate, who propones, *1mo*, Payment of a part of the sum ; *2do*, Compensation by an account which James owed Patrick, which is referred to Murray's oath, who compears and depones *negative* ; and when he is taking out his decret for the remanent sum, there is a bill given in, craving to be reponed against the passive titles, which they now deny, and were not proven. *Answered*, You proponed peremptors, and produced a discharge of a part of the debt, which shews your intromission with your father's papers, which is a clear passive title, and likewise referred an allegiance to my oath, whereon I have deponed, so you cannot recur now to deny the passive titles. *Replied* for the Bairns, They were minors ; and, as they would be reponed against a clear bond, so *multo magis* against a judicial act to their lesion, that being only their advocate's deed, and his error and mistake cannot bind them ; as was found 1st December 1638, Stewart, No 138. p. 9008. ; and 14th February 1677, D. of Buccleuch, No 8. p. 2369. ; and as to the relict, the compearance was promiscuous, and more for the bairns than her ; and there is no act as yet extracted in the cause, so there is still room for her denying the passive titles. *Duplied*, Her second husband was present at Murray's examination, and put interrogatories to him, and so was not ignorant.—THE LORDS reponed the children being minors, but not the widow, nor her second husband.

Fountainhall, v. 2. p. 299.

No 133.

A party had been cautioner for a teller in a bank, who, after the cautioner's death, run in arrear. The cautioner's children were found liable, altho' they pleaded

1739. December 22. ERSKINE against The Daughters of ERSKINE.

COLONEL John and Mr Thomas Erskines had been cautioners for Mr George Andrew, as one of the tellers in the Royal Bank ; and the Colonel being charged on his bond of cautionry for the sum of _____, in which Andrew was deficient in his accounts, repeated a process for his relief of the one-half from the representatives of the other cautioner.

Their defence was, that the deficiency had happened since their father's death, while they were pupils ; that it was the duty of their tutors to have withdrawn their father's bond of cautionry, which every cautioner for a person