

No 148. obvious allegiances, which, if they had been true, could not have been omitted; but they had not the confidence to deny the verity of the letter at that time; and now it ought not to be received, when so long a course of time as 22 years has made such an alteration in prejudice of the party with whom they have to do, as what was easy to adminiculate and astruct them of being his hand-writing, is next to impossible now, all the parties being dead; and if you have, by your delay, deprived me of that probation, you ought to reap no benefit thereby, seeing if you had quarrelled it then, I would have infallibly proved it; and minors may be reponed in points of fact, but not *in jure*, as was found since the Revolution, betwixt Cochran of Kilmaronock and the Marquis of Montrose (*See APPENDIX*), and the Lady Kincardine against Purveshall, No. 145. p. 9016; *2do*, There is no necessity for these solemnities in this case; for, though Haircleugh was no merchant, yet his brother Robert, and Oakley, with whom he contracted, were, and the subject-matter was trading and merchant-ware; so that such missives need neither be holograph nor have witnesses. *Replied*, As soon as he came to understand his business, he insisted vigorously in his reduction; and this is neither *res mercatoria* nor *inter mercatores*. It is true, bills of exchange are regulated *jure gentium*, and are dispensed with as to these solemnities; but this letter is not of that kind, but a mere fidejussory obligation; and cautioners in law are very favourable. *Duplied*, That the principal party's employment, and the subject-matter determined, if it was *res mercatoria*; and even a minor merchandising, giving bond for ware, will not be reponed: And here he is not so much cautioner as *expromissor*, and taking the debt upon him *in constituta pecunia*. THE LORDS repelled the reasons of reduction, and adhered to the decret *in foro*, and refused to repon the minor in this case.

*Fol. Dic. v. 1. p. 583. Fountainball, v. 2. p. 260.*

No 149.

1732. January 14.

ANDERSON *against* GEDDES.

A DECREE having been obtained against a common debtor, during the minority of another creditor, reduction was intended of the same, upon minority and lesion; and it was *pleaded* for the creditor-reducer, That the decree was iniquitous, an obvious objection lying against the claim upon which it was founded; and that he had an interest to reduce, in regard that, at the time of establishing this unjust debt, the common debtor had not a sufficiency of funds to satisfy both. It was *answered*, That the very objection now founded on was proponed by the common debtor himself, and repelled, and minors are never restored against proponed and repelled. And *esto* it had been omitted, minors are only restored to their defences, which were competent and omitted in processes against themselves, where their interest is direct, but not where the pro-

cess is against a third party, though such process may occasionally affect their interest; because this would tend to make pleas endless. THE LORDS assoilzied from the reason of reduction.—See APPENDIX.

No 149.

*Fol. Dic. v. I. p. 584.*

1752. December 5.

JAMES CAMPBELL *against* REPRESENTATIVES of JAMES GRAHAM.

JAMES GRAHAM being incumbered with debts, sold his lands of Longbodholm, *anno* 1728, to James Jardine, who died before any part of the price was payable, leaving a widow and three infant children. There being no readiness on their part to pay the price, James Graham, pressed by his creditors, brought a declarator of irritancy of the minute of sale, which was allowed to pass in absence. This decret of declarator paved the way to a trust-disposition, granted by James Graham, *anno* 1730, in favour of his creditors. The trustees, by the powers contained in that disposition, sold the lands, *anno* 1732, to Edward Cutlar; and the purchaser, to clear the lands of incumbrances, brought a reduction and improbation, in which the Representatives of Jardine were called, and obtained a certification *anno* 1735.

No earlier than the 1750 did James Campbell, in the right of the Representatives of James Jardine, bring a process of reduction of the decret of declarator of irritancy of the minute of sale betwixt Graham and Jardine, as not only being in absence, but against an infant undefended; and concluding also against the trust-disposition, and all that followed upon it. The defence was principally laid upon the decret of certification obtained by Cutlar, the purchaser, against the Representatives of James Jardine; but which the Court did not regard; because, it was discovered, that the pursuer had at the time one of the doubles of the minute of sale in his possession. But, with regard to the reduction of the minute of sale, at Graham's instance, against the Representatives of Jardine, it was the opinion of the Court, that the decret, though against a pupil undefended, was still equal to a decret in absence; that, *quoad* a decret in absence, minority cannot enter into the question; because, a major may be reponed *quandocunque* against a decret in absence, upon paying expense and damage, and that a minor can have no stronger privilege; but that, in the present case, where Graham had sold the lands, trusting to his decret of reduction, though in absence, being the best security he could have for the time, it was impossible the minor could be reponed against the decret, when it was no longer in Graham's power to fulfil the minute, by disposing the lands to the minor. Upon this ground, "the LORDS sustained the defence, that the minute of sale was at an end by the decret of reduction, and by the after sale to Edward Cutlar, in consequence thereof."

No 150.

A minor cannot be reponed against a decret of reduction of a minute of sale, after the land is bought by a third party, on the faith of the reduction.

*Sel. Dec. No 27. p. 39.*