

Resurrection of Minors - How far competent  
for any and all sales of Heresage.

deponing, or by omitting to propone Defences or Allegations, or to lead  
proof l. 10. s. 1. l. 36. ff. cod. or by referring any point to the above par-  
ties both l. 9. s. 4. ff. de iur. iud. or by proponing incompetent Defences.  
So a Minor was relieved against a Defence homologating a minority Deed  
propounded by an Advocate, without a special Mandate 14 February 1677  
Dane & Dutcheff of Bowleugh contra E. Swedale. Minors were repon'd  
against a presumptive papier Title, inferr'd from their procurator's  
proponing for them peremptory Defences, and succumbing in the proof  
7 December 1705 Murray contra Children of Chalmers. A Minor may  
be also judicially lesed by a rash Confession l. 6. s. 5. ff. de Confess. l. 10.  
such a one being pursued summarily upon a Supplication to lead and  
it found, that he had cancelled his Father's Bond, and that the cancelled  
Bond, should make as great Faith against him as when it was entire  
the Complaint was found proved by his Oath, to infer the foresaid Con-  
clusion against himself in fact, & quasi maleficio 20. November 1628  
Hope and Nicolson contra Nicolson. Again a Minor is sometimes ju-  
dicially wronged by the Sentence of a Judge l. c. si advers. rem. iud.  
l. 29. s. 1. l. 42. ff. de Minor. a Minor was reponed against a Decree  
of Exoneration obtained by his Tutor against him with Consent of his  
Curators in foro contradictorio 1 December 1630 Stewart contra Stewart.  
In short a Minor may be restored against judicial Acts and Sentences, if com-  
petent Defences were omitted by the Minor or his Curator: but not where they  
were proponed advised and repell'd before the Lords of Session, or proponed  
and repell'd before an inferior Court, unless Iniquity, by the inferior Judge  
be instructed by the Decree, against which a Major as well as a Minor  
would be reponed Stewart's answers to Dirlot. Double lib. redut. upon  
Minority. Nor yet was a Minor reponed against his Tutor's Omission to pro-  
test for Reprobation in due Time 25 February 1604 Newton of that  
ilk contra Hope.

A Minor may be multifariously lesed in extra judicial business, ac-  
cording to the great Variety thereof. I cannot therefore be particular as  
to all the Deeds of that kind inferring Restitution, but shall content  
myself to instance the most considerable.

1<sup>o</sup> Tho' Alienation by Minors of their Lands with Consent of their Cu-  
rators, is not null for want of the Lords Authority interposed, as the Alie-  
nation of Pupils Lands by their Tutors, is null for want of such Autho-  
rity 13 December 1666 Thomson contra Stevenson. yet such  
Alienation by Minors with Consent of their Curators, may be redue'd  
upon the common Pleas of Lesion within four years after Majority  
2 February 1630 Hamilton contra Sharp, without Necessity to  
call

What if sold and Curator proloc. - sale of  
pleas & goods.

Curators  
call the ~~Curators~~ in the Process, tho they were obliged, to warrant  
the Alienation 7 March 1637 Verneck contra Hamilton and the Doc-  
tors will have Alienation made by a Curator of the Minor's Land as his  
own, or by a Minor made to his Curator, to be null without qualifying  
Lesion, and quarrellable even after Elapsing of the quadriennium  
Utile, Brunemann in l. 3. C. si maj. fact. Alien. red. hab. a Sale of  
Lands by a Minor with Consent of his Curator, to his enorm. Lesion  
and prejudice, was found redueable without <sup>obliging the</sup> purchaser in ingressu litis  
to produce any right to these Lands in his person 19 & 21 March 1635  
Glume contra Kiddel. Tho' he induced an Alienation of some Land by a Mi-  
nor, albeit ~~the~~ not only the Disposition bore the Minor's Receipt of  
the Money or Price which was more than the just worth of the Land,  
but also the purchaser offered, <sup>to prove</sup> in Fortification thereof by 3 Witnesses  
that he payed the Money, unless it were proved to have been payed to  
the Curators, or converted to the Minor's Utility 25 January 1631  
Houston contra Maxwell. Therefore it is the safest Course for the pur-  
chaser of a Minor's Heresage, to take Assignation to Debts to the Value,  
mentioning the Design of the Assignation.

By the Civil Law Minors lesed may be restored even against the Alie-  
nation of Lands Tutoris Prætoris l. 1. s. 2. ff. de reb. cor. qui sub. tut. be-  
cause the Sentence of a Judge doth not exclude or obviate all Manner of Le-  
sion, but is admitted only to prove, that there was a just Cause for making  
of the Sale.

But such Defences payed to the Authority of the Lords of Session,  
that their Decree appointing the sale of a Pupils Land, will secure  
a purchaser tho there was no Necessity to make Money of the Here-  
sage. For otherwise people would be frighted in any case to buy that  
which belongs to Minors.

If a thing belonging to a Minor be sold by another as his own, the Min-  
or has his Election either to seek Restitution of what is sold from the  
Buyer, or to claim the price from the Seller or from his Creditors  
having affected and uplifted it by Virtue of Legal Diligence, Matk.  
de Auct. lib. 1. cap. 10. N. 2. & 3. Voel. Comm. ad tit. ff. de minor. N. 16.  
as well as he might either vindicate that which is bought by his Tutor  
or Others with his Money, or recover the Money as he thinks fit l. 2.  
ff. quãd. ac fact. tut. vel cur. Arg. l. 3. C. Arbit. tut. junct. l. d. C. de rei  
vind. it being all a Matter whether Money be made of goods or turned  
to goods Arg. l. 26. l. 27. ff. de pure Dot. the formal and orderly  
Repos of a Minor's goods impugnered, whether by himself or his  
prede-