

Restitution of minors - against - services & confirmations to their executors.

of a Burden upon it that is uncertain and depends upon a Person's Life, Tutors could not be allowed to buy a Throw of the Die with the Minor's uncontroverled Interest; or to squander his Estate from the View of a possibility of increasing it. As a Tutor could not warrantably continue in his Pupils Name with his Wills, a Trade of Infirmitie, tho' commenced by the Father, because of the Danger it is exposed to. *Verd. Comm. ad lit. ff. de admin. & peric. tut. N. 13. And go. Verd. sub. ac. tit. ff. de Minor.* tells us that a Minor will not easily be restored against a Transaction with his Father or Mother, concerning the Heredage of a deceased Predecessor.

4^o Minors may be restored against a rash entering or renouncing to be Heir to C. si ut. ab hered. C. abstin. lit. C. si ut omip. hered. vel bon. poss. If she has renounced an Inheritance which might have been profitable to him, he will be allowed to retract his renunciation, and to accept the Inheritance, and if on the contrary he has accepted a Succession that is burdensome, he may be relieved from it and allowed to renounce it. A Minor repending of his having renounced a Succession, and finding his Account in entering upon the Inheritance, will be relieved while things are still entire, but not after *C. 29. §. 2. ff. de Minor. et. tut.*

A Tutor having confirmed his Pupils Executors to their Father it was sustained relevant to reduce the Confirmation upon Minority and Lesion that the Hereditas mobilium was damnosa, there being more moveable Debt than the Executory could pay. And both the Tutor and his Cautioner being insolvent, the Pupils confirmed were not so much as thought habile to count for the Tutor's Intromissions to the Father's Creditors, and seek Recourse for their Reimbursement *actioe tutelae* against the Tutor and his Cautioner. In respect where Pupils are confirmed Executors it is the Tutor and not the Pupils, who gives up Inventory and finds Caution: and the Creditors of the deceased ought to have done Diligence against the Tutor, and recovered what he intromitted with after the Confirmation for payment of their Debts. *27. January 1688 Judgment in Leith contra Jervissons.*

5^o Minors are relieved not only when they suffer Loss, but also when they are deprived of some profit which they ought to have had.

By the civil Law a Minor outbidden at an Auction might be restored *adversus additionem plus licitanti*. If he could show that it was his Interest to have bought that which was exposed to Roup, as that it once belonged to his predecessor *C. 35. ff. de Minor.* But we do not consider a Person's Affection in remotionem so much, as for that only to restore a Minor against an open Sale of another Man's goods: tho' we have some Consideration of a Minor's rational Affection and Love towards his own Property exposed to Sale. And herein we agree with the Dutch Law. *Verd. Comm. ad lit. ff. de Minor. N. 29.* Yet if a Minor find himself lesed by purchasing any thing at an Auction as the highest Offeror, he may seek to be relieved *Matth. de Auct. lib. 1. cap. 10. N. 44. Verd. Comm. ad lit. ff. de Minor. N. 20.* Tho' a small Difference in the Price such as ordinarily happens in buying and selling, will be no ground of Lesion. Stewart's Answer to Dirdet. Doubts. lit. red. upon Minority.

6^o A Minor was restored against Bonds granted by him for Ale, Mead and Drink necessarily furnished to his Brethren and Sisters by his special

Restitution how far warranted to the Minor when he purchases

Special Command and Direction, because he was not bound in Law to furnish them all. *February 1637 Weyms contra Creditors.* *C. 6. §. 1. de Minor. Les Loix civiles &c. Tom. 1. part. 1. Liv. 4. tit. 6. sect. 2. Art. 2. 3.* 7^o If an Act or Deed executed by a Minor were not to take Effect till after he arrived at the Year of Majority, he would nevertheless be restored against it, if he were wronged by it *C. 3. §. 1. ff. de Minor. Les Loix civiles &c. Tom. 1. part. 1. Liv. 4. tit. 6. sect. 2. Art. 2. 3.*

So much shall suffice us to the Causes for which a Minor may be restored in integrum upon the Head of Minority and Lesion: I shall in the next place show to whom and against whom this Privilege of Restitution is competent; in what Cases Minors are barred from such a Privilege; and what is the Effect of Restitution.

The Benefit of Restitution on the Head of Minority and Lesion is competent to the Minor lesed and also to his Heir. The Heir if he be also Minor may reduce the Deed of his Predecessor being in Minority, at any Time before he himself be 25 Years of Age, the Time of Restitution being regulated by his own and not by his Predecessor's Minority. If the predecessor died Major intra Annos Uides, so much of that Intervallum utate is competent to the Minor Successor after elapsing of the Course of his own Minority, as remained to the deceased at his Death. But if the Minor's Heir be Major, hath only the quadriennium utate after his predecessor's Death or so much of it as was then to run for seeking Restitution, *C. 10. §. ult. C. 19. ff. de Minor. C. 5. C. de temp. in integr. restit. Verd. Comm. ad lit. ff. de Minor. N. 30. 14. March 1628 McMath contra Baron of Brighton.*

Sir John Nisbet (Doubts lit. Minor.) states a Question if a Minor's Heir will be restored upon this ground, that his predecessor resigned intailed Lands in Favour of Heirs whatsoever; there being no Lesion to the Minor? to which Sir James Stewart answers that a Minor may not alter the Succession of his Lands, and that any such Alteration made by him would be judged at least an Effect of his Faculty, if not Lesion.

This Restitution is not personal to the Minor and his Heirs, but is even indulged to Aliquies *C. 24. ff. de Minor. C. 25. ff. de admin. tut. And the thing in Contemplation whereof it was competent to the Minor, being bequeathed or gratuitously assigned, the Privilege of Restitution is thereby tacitly, tho' not expressly transmitted to the Legatary or gratuitous Assigny *Arg. C. 2. §. ult. in fin. ff. si serv. vind. As in the Case of a Legacy of res litigiosa the Event of a Pleas is understood to be bequeathed *Matth. si C. de litig. non. 112. cap. 1.* It is hard to say, if that tacit Consequence would be extended in Favour of a Buyer or one purchasing for an onerous Cause from a Minor, that which he librico extatis insipynorated or brought under a Service unless disposed by the Minor expressly, as free of all Burden or Service. For other wise the Price is presumed to be commensurated to the thing sold, as so burdened *Verd. Comm. ad lit. ff. de minor. N. 9.* But a Person having with the Concurrence of his Creditors, raised Reduction of a Deed done by him in his Minority whereby he suffered onerous Lesion, and being debar'd ad agendo by Horning against himself: the Action was allowed to be carried on at the Instance of the Creditors; tho' the principal party was**