

Restitution - competent to the heirs of Minors - what of the law was the (benefit) for the minor - not content by our law to (consequence)

was excluded, and their interest only consequential upon his 7 March 1623. L. Bargony contra his Sons.

But the & Minors Heir have the same ^{Benefit} of Restitution that was competent to himself, for that they are reputed in Law as una persona, the Minor's Restitution is not profitable to his Surety, who interposed for him as a Minor l. 13. ff. de Min. l. 1. & 2. C. de pde. jus. unless the Minor was wronged by the fraud of his adversary d. l. 2. or unless the cautioner fall Heir to the Minor, whereby the accessory obligation is eating into his confusione, seeing no person can be his own Surety, l. 5. ff. de pde. jus. l. 93. §. 2. l. 3. ff. de solut. jo. Voet. (Comm. ad lit. ff. de Min. N. 39) thinks, that tho' in strict Law the Accessory obligation of the Cautioner for a Minor qua talis, becomes extinct by his succeeding as Heir to the principal Debtor: yet the Creditor may either apply to get a separation of the causa defuncti & heredis l. 3. ff. de Separat. Or may elide the Cautioner's Defence upon his being Heir to the Minor Exceptione vel Replikatione doli aut in factum. Voet. l. 19. ff. de pde. jus. But if a Cautioner interpose for a Minor tanquam quilibet, and not as a Minor, he will have the benefit by the principal Debtor's Restitution l. 51. ff. de procur. l. 29. ff. de acquir. vel amit. hered. l. 2. §. 1. ff. de admin. tut. The Reason why a person becoming Cautioner for a Minor as such, is nothing the better for the principal's Restitution, is because his accessory obligation seems to have been taken for the Creditor's Security in the Event of such Restitution. If a Minor be imbrued in the same affair with one that is Major, as when one of two Heirs portions who rashly enters to a damnosa hereditas, or one of two joint Proprietors who undersold something belonging to them in common, is Minor, the Minor may for his part be restored against the paper Title or Sale, while the other Portioner or joint Proprietor stands effectually bound l. un. C. si in communi ead. caus. in integ. restit. postul. d. 48. wife, whose Hus band was Major, reposed upon Minority and Leshon against a Discharge granted by him and her of Debts belonging to her, and against a Disposition of her Lands granted by her with his Consent, and him as taking burden for her to her Father & Tutor; was excluded from the Annual rents of the Debts and Rents of the Lands during the Marriage, as falling under the Husband's pde. Mariti, which with his Privilege was found cut off by the Deeds aforesaid 25 July 1705 & 4 July 1706 Bofwal and Hamilton contra Bofwal. But where an Affair competent to a Major and Minor is indivisible, the one's Minority is profitable to the other l. 10. ff. quem ad. servit. amit.

By the Civil Law, the Church, Fish Hospitals and Communities (albeit they have not the same Privileges with Minors in all things) are in the Matter ~~of~~ of Restitution equally favoured a privileged C. 4. C. ex quib. caus. maj. l. 3. C. de pure. Acq. l. 9. ff. de Appol. l. 23. C. de P. S. Eccles. l. 32. C. de Episc. & Cleric. Voet Comm. ad lit. ff. de Minor. N.

Restitution ^{of minors} ~~of minors~~ ^{Community} ~~Community~~ ^{on the side} ~~on the side~~ ^{Privileges} ~~Privileges~~ ^{concern} ~~concern ^{with} ~~with ^{the} ~~the~~~~~~

N. 55. For this general Reason, because the goods of these as well as of the Minors are necessarily under the Administration of others, whose imprudent Management should not be prejudicial to them. But it is not so with us. For the Magistrates of a Burgh having made a Bargain in Relation to an Affair of the Burgh, the succeeding Magistrates were not allowed to quarrel the Deed as prejudicial to the Community who were Minors: but Action was reserved to them against those Magistrates who made the Transaction 24 November 1685 Arch. B. St. Andrews contra Magistrates of Glasgow.

Restitution is competent to Minors against the persons by whom they were lesed, even against the Fisc l. i. C. si advers. fisc. and against another Minor who is in lucro captando or hath reaped benefit by it l. ii. §. pen. l. 34. ff. de Minor. for the common Axiom, Privilegiatus contra aequo privilegia-tum suo non utitur privilegio, takes place only where both are in pari causa lucrum captantes or damnium vitantes. But Relief is not to be indulged to a Person wronged in his Minority to the Loss of another Minor, or against another Minor who is not completior factus by the Bargain d. l. ii. §. pen. & l. 34. ff. de Minor. not yet against a third Person to whom the Contractor with a Minor did alienate the Subject whereby he was wronged; unless the said third party was either partaker of the Fraud, or innocent and his Author who contracted with the Minor insolvent; or that it be the Minor's Interest to have the thing itself, rather than the Value of it l. 19. §. ult. l. 14. l. 15. l. 39. §. ult. ff. de Minor. l. 39. ff. de eod. Voet. Comm. ad lit. ff. de Minor. N. 41. But Mr Domat is of Opinion, that if one of two Minors is under an Engagement to the other, which turns to his prejudice, he ought to be relieved from it without any regard to the Quality of the person to whom he is oblig'd, and that even tho' his Restitution should be to the Loss of the other Minor: Thus for Example if a Minor had bound himself Surety for the Debtor of another Minor, he would be restored, altho' the Debtor proving insolvent, the Minor who is Creditor should lose his Debt. And if it should happen that both the Minors were wrong'd, he who is under an Engagement to the other, the performance whereof would be prejudicial to him, will be relieved from it. Thus for Example if a Minor having borrowed Money from another, has no longer the said Money in his possession, and has not laid it out to any profitable account; he will be relieved from his obligation to pay back the said Money, altho' the other be a Loser thereby. For seeing in all the Cases of this Nature, the obligation of the Minor for a Cause which is no way turned to his disadvantage ought to be annul'd, and the consequence of the Loss which happens thereby to him who had treated with the Minor does not alter his Right, nor validate his obligation. But this Loss is considered either as a mere Accident, or as an Event, which he who had treated with a Minor ought