

Restitution - Cases in which it does not when
place.

Benefices; and the Church is presumed to admit qualified persons.

7^o A Minor is not restored if lised dum jure communi utitur, by maintaining
Job to which Major and Minors are equally obnoxious l. fin. C. de in integr. res-
tit. l. ii. §. 1. ff. de reg. jur. As when a Minor was lised by any prejudicial
Contract entered into by his predecessor to whom he is Heir l. pen. C. de
resit. milit. l. 2. l. 5. §. 2. C. de temp. in integr. restit. Mathh. de Quir. lib. 1.
C. ii. N. II. Brunom. ~~man.~~ ad l. 30. ff. de minor. N. 4. Voet. Comm. ad lit. ff.
de Minor. N. 49. or is lised casu fortuito l. ii. §. 4. ff. de Minor. Voet. ibid.
Les Lois Civiles &c. tom. i. part. 1. liv. 4. lit. 6. Sed. 2. Art. II. As by ship-
wreck, Flope de minoribus Edgar contra Edgar. So if a Horse bought by a
Minor should die the Day after he was bought, or prove ill or not worth the
Money after the Sale, he cannot be restored; because a Major might be
coined in this.

8^o A Minor is excluded from Restitution, by the others proving that the Deed
in question was in rem versum or profitable to the Minor or applied to a good
and profitable Use. Stair Inst. lib. 1. tit. 6. §. 4. ii December 1629 Gordon con-
tra E. Galloway ult. February 1637 Weems contra Creditors. Thus a Minor
was found liable for an Account of Mournings taken off by him not only
for himself, but also for his Brothers and Sisters: in Regard the Merchant
was not bound to know but all was to be imployed for the Minors own Use
and the Minors Father had before his Death delivered Money to him to
defray the Charge of Mournings for his Brothers and Sisters 14 July 1715
McDonal contra Marshal. A Minors Bond was sustained albeit granted with-
out Consent of his Father as lawfull Administrator or Curator to him, seeing the
Sum was profitably imployed for making him a Notary and Messenger;
tho this was to be proved otherwise than by the Acknowledgment thereof in
Bond. Seeing eadem facilitate that Minors may be induced to borrow
Money unprofitably, they may be moved to declare what is not Truth
24 February 1672 Conner contra Deans. A Bond granted by a Minor ha-
ving Curators who consented not thereto, was sustained in respect it bore to
be given to him who was the Grantors pedagogue for his Fees and Ser-
vices, and the Creditor in the Bond offered to prove by Witnesses, that he
was the Grantors pedagogue and served and attended him as the Bond
mentioned 22. June 1627 Drummond contra B. Broughton.

9^o By the Civil Law Minors having sworn to adhere to their Deeds were not
allowed to quarrel the same l. i. et Authent. Sacramenta puerum C. si
advers. vend. which was also Law with us till the Year 1601, 15 January
1634 Hepburn contra Hepburn 10 February 1672 Wash contra Wash
13 December 1677 M. Mordunton contra Cliphart ^{January 1691}
Fletcher of Aberlady contra Murray of Blackbarony and others For
this Reason, because perjury should not be favoured, and it would be
more

Restitution - Minor must who restitute on
his part

more hurtfull to the Minors than any civil Damage they could sustain: so
that a Minor was not thought lised by losing his Means to save his Soul; and
even in Countrys where such Oaths were declared by Law invalid, the Minor
believed to be absolved by a Church-Man. But now the Confirmation of Mi-
nor Deeds by Oath, is hardly any where sustained that I know, Green-
way de legib. abrogat. ad lit. l. si advers. vend. §. 3. Voet. Comm. ad Tit. ff. de Minor. N. 48.

With us the exacting such Oaths of Minors is severely discharged by
Law (Act. 19. par. 3. Ch. 2.) the Deed thereby confirmed declared null and the
Exactor infamous: For Oaths might as easily be elicited from Minors as
Bonds and Obligations, who will as readily consent to swear, as to contract
to their own prejudice. Tho' the Statute provides expressly only against
taking the Oaths of Minors for confirming their written Obligations;
the Remedy thereof extends against eliciting Oaths in Satisfaction of
Promises M. Henz. observ. on d. Act. 19. because some Minors might
scruple or be shy to pursue Reduction of their Obligations confirmed by
Oath, and it were indecent for one to object against his own Oath: Such
a Pursuit lies at the Instance of any person related to the Minor's
Act. 19. So a Ratification by a Lady on her Death-bed of Deeds done by her
in Minority, was found to be only personal, and not to hinder her Heir to
quarrel the same 27 February 1683. E. Lovin contra Montgomery.
But a judicial Ratification by Oath, inter virum & Uxorem is something
more effectual vid. infra. pag. 260.

10^o By the Ordinance of Lewis 14 King of France 1601 concerning the
Marine (sect. 91. Art. 19) Minors may with the Advice of their Relations,
contract Obligations for ransoming their Fathers from Captivity.

If any Minor seek to be restored against an Alienation made by
him in his Minority, he must offer Restitution of what he received on
that Account; otherwise he may be repelled exceptione solvi. And in the
Case of a Minors Restitution against entering Heir, he will be liable
to refoand his Intromissions in quantum locupletior factus l. un. C. de
reput. que sunt in judic. in integ. l. 7. §. 5. ff. de Minor. Sane deuf-
fry lib. 1. tit. 15. def. 2. in fin. A Pupil was not restored upon the
Head of Lefion by being served Heir to his Father who was obnoxious, and
accepting of a Disposition to his Estate with the Burden of Debts; unless
he restored the whole Rents of the Estate intromitted or that might
been intromitted with by his Tutors and Curators. 1 December 1708
Barclay of Gowrie contra Creditors of Rothemay. Where a Minor was
restored upon Minority against a Disposition in his Contract of Mar-
riage of his Fathers Estate with the Burden of Debts, where a
jointure was provided to the Minors Lady in Contemplation of a
Bridal