

## MINOR NON TENETUR, &c.

### SECT. I.

In what cases the privilege competent.

1541. March 22.

LINDSAY against CHEYNES.

KATHARINE N. and William Lindsay her spouse *pro suo interesse*, called Alexander, William, and James Cheynes, to hear their infeftment and sasine of a tenement within Edinburgh, made to them *pro indiviso* by resignation of one James Young notary public, in one of the Bailie's hands of Edinburgh, to be reduced for certain causes, as the summons contained. The said bairns' procurator, Mr James M'Gill, excepted, That two of them were *intra minorem etatem*, and so *de jure regni non tenebantur placitare super hereditate*; and, because they three were in the said tenement *pro indiviso*, no process should, nor might be led against them. Which allegiance the LORDS, by interlocutor, found relevant, and so decerned to prove *minorem etatem*.

*Fol. Dic. v. 1. p. 588. Sinclair, MS. p. 20.*

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The Lords found, that not only minor *non tenetur* when he brooks *pro indiviso* with a major, but in that case even the major is not obliged to answer.

1546.

HAMILTON against The Laird of GASTON.

JAMES HAMILTON, son and heir to umquhile Sir James Hamilton of Finart, pursued the Laird of Gaston to produce an infeftment granted to his father by King James V. of certain lands through the forfeiture of umquhile Sir James

No 2.

No 2. the pursuer's father, to hear and see the said infeftment declared null, because that the forfeiture, with all that had followed on it, was reduced in Parliament. *Excepted*, That the defender being minor, could not *placitare super hæreditate*, according to our law; yet the LORDS repelled this exception, in respect that these lands came by forfeiture, which was reduced; and thought it a hard matter that a man should be forfeited wrongously, and yet not come by his own, through the minority of a pupil.

*Fol. Dic. v. 1 p. 591. Spottiswood, (MINORS and PUPILS.) p. 211.*

\* \* Sinclair reports this case :

1545. Dec. 11.—JACOBUS HAMILTON hæres quondam Jacobi Hamilton petiit hæredem domini de Gaston producere infeofamentum suum regium certarum terrarum patri suo factum ratione forisfacturæ dicti quond. Jacobi et illud decerneret nullum quod dicta forisfactura jam extat per decretum parliamenti reduct. cum omnibus inde secutis. Reus quare minor annis allegebat se non placitare teneri in hoc casu super hæreditate sua secundum leges regni et regie majestatis. Domini tamen in hoc casu interlocuti sunt minorem teneri reddere super hæreditate illa ad eum delata per forisfacturam quia etiam extat reduct. prout erat in hoc casu; alias sequi magnum inconueniens et absurdum, et injuste hereditate sua defraudaretur heres dicti domini Jacobi injuste forisfacti.

*Sinclair, MS. p. 66.*

No 3. 1551. June 28. Lady ANGUS against KER.

IN the action pursued by the Lady Angus against the Laird of ———, and Thomas Ker his son, for reduction of an infeftment made to them; it was excepted against the libel, that they might not proceed against the said Thomas upon his heritage, he being of less age. To which it was *answered*, That a minor but in fee of land, *patre adhuc vivo* may well be called upon the property of his heritage together with the father; in respect of the which answer, the exception was repelled.

*Fol. Dic. v. 1. p. 588. Maitland, MS. p. 105.*

No 4. 1610. February 20. ANNAND against Ld of ESSILMONT.

A MINOR being apparent heir to his predecessors, and summoned to produce his infeftments to be produced, no certification will be granted for not production, if he allege quod minor non tenetur placitare super hæreditate paterna, albeit he be not infeft in the lands as heir to his father.

*Fol. Dic. v. 3. p. 435. Haddington, MS. No 1814.*