

S E C T. III.

No privilege where the process is founded upon the predecessor's deed.—Nor where action was commenced against the defunct.—Nor where the Minor is the first provoker.

1546. *March 1.* The QUEEN'S ADVOCATE *against* WEMYSS.

THE LORDS decerned David Wemyss, second son to the Laird of Wemyss, to answer upon the improving of his instrument of sasine of the lands of K, for which the Queen's Advocate called him to produce the same, to hear and see it civilly improven, notwithstanding the said David's procurator alleged, that he was "minor annis et agebatur hic super hæreditate sua, et annullatione suæ sasinæ hæreditariæ, et de jure Scotiæ minor non tenetur placitare; nisi in quatuor casibus relatis in Regia Majestate Scot. Domini hanc allegationem repulerunt ratione iniquitatis ejusdem; nam esset iniquum quod minor ex suo suorumve dolo et fraude, in conservacione falsi instrumenti repertaret commodum, et quare periculum erat in mora; quia, si probatio deferretur in perfectam ejus ætatem, forte possent interea testes instrumentarii perire, et sic instrumentum iniquum posset improbari, et ideo ut veritas illucesserit. Interlocuti sunt Domini, ut supra, licet hic casus consequenter auferat minori hæreditatem, viz. instrumento probato simulat. Extat practic. contra Reginam, quæ decreta fuit per interlocutoriam Dominorum Concilii, respondere super retractatione resignationis Domini de Dalbeyt facti ad perpetuam remanentiam in manibus illustrissimi quondam patris sui Jacobi quinti Scotorum Regis, per Dominum de Dalbeyt, in qua causa exceptio minoris ætatis Reginæ fuit repulsa."

Fol. Dic. v. 1. p. 589. Sinclair, MS. p. 71.

1548. *February 12.* LADY SETON *against* COCKBURN.

THE Lady Seton called Al. Cockburn of Harpenden, and James Cockburn his son, of five or six years old, or thereby, to hear the heritable sasine of the lands of Harpenden, given by the said Alexander to his said son, reduced and retreated; because the said Alexander, immediately following the giving thereof, had annalized twenty-six merks annual, out of the said lands, to the said Lady, and the Priests and College Kirk of Seton, and given them charter and precept of sasine; and, before they got sasine, great sums of money paid

No 32.

The brocard was found not to take place in a reduction, upon the dolo or fraud of the minor's predecessor.

No 33.

Found in conformity with the above.

No 33. to him by the said Lady and Priests, "dolose infeodavit dictum suum filium in eisdem;" and so, said she, that alienation "dolo et fraude ut perfecta de jure erat retractanda. Procurator Jacōbi minoris dixit eum non compellendum respondere in hac causa, ex eo quod erat super hæreditate sua, super qua ipse ætate minor annis placitare non tenetur de jure regni, nisi in quatuor casibus in Regia Majestate expressis, de quibus casibus presens non erat unus; et quod in similibus casibus, sic sæpe practicatur; et ideo petiit se absolvi ab instantia judicii usque ad perfectam ætatem.—THE LORDS decerned the said James to answer, notwithstanding his allegiance; because, "agebatur hic de retractatione dolose infeodationis hæreditariæ sibi per patrem suum facti, retent. in manifestam fraudem dictæ Dominæ, et quod minor non deberet locupletari cum jactura alterna, et de dolo patris sui, et quod iniquum valde foret, si pre-textu minoris liceret patribus sic defraudare alios, et quod suaudente equitate, in hoc casu licite possit judex a stricto illius juris municipalis regni Scotiæ (de quo supra) severitate recedere, attento etiam quod jus regni prædictum deberet maxime intellegi in minoribus, qui habent suos legitimos gubernatores, non iis qui orbi parentibus possent forsan gravissime lædi, si de sua hæreditate placitare cogerentur; sed hic minor habebat patrem suum superstitem adhuc, et fraudulentum, et dolosum; et similiter suadente equitate ad exonerandam conscientiam, Jacobi quinti Domini Consilii discreverant statim post mortem suam, Reginam Mariam reddere super reductione resignationis Domini de Dalbeyt, facti per Dominum ejusdem in manibus Regis prædicti ad perpetuam remanentiam.

Fol. Dic. v. 1. p. 589. Sinclair, MS. p. 85.

1574. November 16.

ABBOT of DUNFERMLINE against The HEIRS of MR GEORGE CRICHTON.

No 34.

ANE minor may be compellit to enter in pley in ony actioun or cause concerning his heritage, gif the samin was intentit agains his predecessour, swa that litiscontestation was maid thairin befor his predecessouris deceis.

Balfour, (MINORS.) No 11. p. 333.

* * * Colvil reports this case :

1574. November 16.—The abbot of Dunfermline pursued Martin Crichton of Cranston-Riddell, and Mr Robert Richardson prior of St Mary's Isle, for recognition of certain lands immediately holden of him, by service of ward and relief, alleged to be analized by the said Martin, present prior thereof, without consent of the said abbot superior thereof. At the calling of the summons compared Mr George Crichton, and desired to be admitted for his interest, and