

1613. July 13.

HOME against HOMES.

No 5.

In an action of reduction by Patrick Home of Polwarth, *contra* John Home of Heugh and Alexander Home of Johnscleugh, the LORDS granted process against the minor against the principle of the brocard, quod minor non tenetur placitare super hæreditate ; and that because the minor was only called for his interest, albeit it was reasoned that his interest was such as could not be miskened, he being infeft in the lands as heir to his father and in possession.

Kerse, fol. 141.

* * Haddington reports this case :

In the action betwixt the Laird of Polwarth and the gudeman of the heugh, Alexander Home of Johnscleuch, ane of the parties called for his interest, *alleged* na process, because he was minor and was heritable infeft in ane part of the lands controverted, likeas his father and himself had been in possession thereof mony years, and his father had intimate his sasine in effect to the pursuer's father judicially by production thereof at the time of the pursuer's father's service and retour to thir same lands, and the said Alexander being minor, non tenebatur placitare super hereditate. It was *answered*, That his evidents were not called for principaliter, nor na reason conceived against them particularly, but only against the sasines of Robert Home of the Heugh, the reduction whereof could not be staid be the interest of any minor having only subaltern infestments ; in respect whereof, the LORDS repelled the allegiance.

Haddington, MS. No 2518.

1624. November 25.

HAMILTON against MATHESON.

No 6.

In an action betwixt Hamilton *contra* Matheson and others, for reducing of a contract of alienation of lands, and of diverse subsequent securities of the said lands made to subaltern persons *in consequentiam*, as depending upon that contract ; the LORDS found, that one of the defenders being minor, whose father had acquired a subaltern right of a part of the said lands disposed by the said principal contract, which was principally quarrelled ; and being heritably infeft in a part thereof, ought not to be compelled to dispute upon her heritage in her minority ; albeit it was *replied* by the pursuer, That seeing her right was not principally nor originally quarrelled, but only was a dependence upon a contract made betwixt other parties ; and which contract was only drawn in question upon nullity ; that therefore her minority could not hinder the course of the process for annulling of that contract, wherein she nor her father were not parties, they having only acquired a subaltern right, as said is, from the party contracter ; against the which principal contracter the action was pur-

A purchaser of land who had granted a subaltern right to a minor's predecessor being attacked in a reduction, was found not to have the privilege of stopping process till the minor's majority, altho' if the reduction should succeed, it behoved to affect the minor's interest.