

1628. February 15.

The MASTER of JEDBURGH *against* The EARL of HOME.

THE Master of Jedburgh intented an action for proving the tenor of a charter made by Alexander Lord Home to Andrew Lord Jedburgh, *anno* 1567, against the Earl of Home. Sir John Ker, and others, *alleged*, *imo*, No process against the Earl of Home, because he was minor, *et non tenebatur placitare super hereditate paterna*; for this action was of the nature of a reduction, as he alleged, because, if the pursuer prevailed, the charter would stand good against the defender, and so would take his heritage from him. *Replied*, That this action only put the pursuer in the same case he was in before the charter was lost, and did not make it either better or worse.—THE LORDS repelled this allegiance.

2do, *Alleged*, the pursuer had only right to the lands of Justingleys, which were but a small portion of the lands contained in the charter, and so his partial interest could not furnish him a ground to prove the tenor of the whole charter. This was likewise repelled, because it was thought it could not divide.

3tio, *Alleged*, that a part of the pursuer's interest was founded upon a bond made by umquhile Alexander Lord Home, wherein he was obliged to infeft the pursuer's predecessor in such lands; and so this personal bond could not give him interest to pursue this action, which was the ground of a real right, for it could never carry him to the lands, but furnished him only personal execution against the giver and his heirs.—THE LORDS sustained the interest upon that personal bond.

Fol. Dic. v. i. p. 589. Spottiswood, p. 249.

* * * Durie reports this case :

IN an action Master of Jedburgh *contra* E. Home, for proving the tenor of a charter of diverse lands, granted to umquhile Andrew, abbot of Jedburgh, which umquhile Andrew had given infeftment to the pursuer of certain of these lands contained in that charter, and, by his bond, he had obliged himself to give infeftment to the pursuer of some other lands therein contained. This action was sustained against the E. Home, he being now heritor of the lands; albeit it was *alleged*, that he was minor, and was not holden in his minority *placitare super hereditate paterna*; for, if the tenor of this charter were proven, being anterior to his right, it would make the same fall; which allegiance was repelled in this nature of action, for proving of the tenor of the charter. In this process also the LORDS sustained the pursuer's interest, *viz.* as being infeft in some of the lands contained in that charter, to seek probation of the tenor thereof for the whole lands therein contained, albeit he had only right

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The privilege does not extend to an action of proving the tenor.

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to a part, seeing the charter could not be divided anent the trial of the tenor thereof. Likeas they found, that the personal bond concerning some other of the lands therein contained, gave the pursuer interest to seek probation of the tenor of the said charter, albeit the defender alleged, that a personal bond could not produce action for proving of the tenor of a real right, except some other action had been first moved upon that personal bond, which might in law produce a pursuit concerning a real right in the person of the maker of the bond, which was repelled.

Act. *Aiton et Stuart.*Alt. *Hope et Belsbes.*Clerk, *Gibson.**Durie, p. 345.*

* * * This case is shortly observed by Kerse in the following words :

It was repelled in an action of probation of proving the tenor of a charter.

Kerse, MS. fol. 146.

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1628. *March 12.* ALEXANDER BALMANNO *against* WILLIAM YULE.

IN an action of reduction pursued by Alexander Balmanno against William Yule, for reducing of a disposition of a low cellar, made by John Maxwell to umquhile Nicol Yule, the defender's father, and that *ex capite inhibitionis*; *alleged*, No process against William Yule, because minor, *et sic non tenebatur placitare super hæreditate*.—Found not relevant against the production.

Fol. Dic. v. 1. p. 589. Spottiswood, (REDUCTION.) p. 269.

1665. *January 31.*KELLO *against* PRINGLE.

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IN all events where the minor himself is not infest, he must produce the predecessor's infestment, to evidence that it is *hæreditas paterna*, without which he cannot have the benefit of the exception.

Fol. Dic. v. 1. p. 589. Stair. Newbyth.

* * * This case is No 11. p. 9063.

1670. *January 8.*MR JOHN WILKIE *against* ANDERSON of Dowhill.

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A minor is obliged to

IN an improbation pursued at Wilkie's instance, it being *alleged* for the defenders, that no certification could be granted, *quia minor; non tenetur placi-*