and would be compelled by law to restore the duties of the said lands to the heritor thereof, and so reaped no benefit by his father; this exception and duply was sustained by the LORDS, that the defender should not be holden as heir; albeit the pursuer *answered*, That once the defender had entered to these lands, which were bruiked by his father the time of his decease, *per tacitam relocationem*, he being tacksman thereof before, by the which entry the defender having no right otherways behoved to enter as successor to his father; and there was no decreet of improbation, but which was only obtained since the defender's father's decease, against the defender's self, and was never intented against his father, and so cannot purge the defender's entry after his father's decease, and before that decreet of improbation, and which cannot make him cease to have succeeded therein to his father. Likeas, notwithstanding of that decreet, he hath thereafter still intromitted with the profits and duties of the same lands. Which answer was not respected, but the exception and duply sustained, as said is, seeing the decreet foresaid would make the defender accountable for his intromission with the said lands, and so he could not there-through be reputed heir. See PASSIVE TITLE.

No 152.

Durie, p. 367.

1630. *July* 22. FARQUHAR *against* CAMPBELL.

No 153.

ROBERT FARQUHAR pursues George Campbell of One Sleuch, heir, or at least lawfully charged to enter heir to umquhile John his father, for sums of money addebted by the defunct to the pursuer. The defender offers to renounce.—It is *replied*, That he cannot, because it is offered to be proved, that since the decease of his father, he hath behaved himself as heir, by intromission with his father's heirship goods and gear, and forms of rooms and possessions possessed by his father.—It is *duplied*, That any intromission can be alleged against him, was by his tutors in his minority, and he was now content to restore the same; which reply the LORDS found relevant.

Auchinleck, MS. p. 133.

1631. *March* 10. LA. HADDO *against* L. LUDQUHARN.

No 154.
A minor restored against a wadset, consigning only the principal sum, although his curator, who, by transaction with the wad-

THE Laird of Haddo's forbears wadsetting some lands to Mr Thomas Davidson, redeemable by payment of 5000 merks, and the said Mr Thomas having pursued upon that infeftment the tenants of the lands for payment of the duties thereof; in which cause the L. Ludquharn, curator to Haddo, compearing to defend the tenants, he taking burden upon him for Haddo and the said Mr Thomas, submitting themselves amicably to two of the Lords of Session, who by their decreet decerned Ludquharn to pay to Mr Thomas the said principal

No 154.
setter, had debursed the annualrents, insisted that they should likewise be consigned.

sum, together with the annualrent at 10 per cent. for so many terms as he wanted the profit of his money, and ordained him to assign his right to Ludquharn, for his security of the money, to be so debursed by him, and him to be accountable to his minor for the profits of the said wadset land, wherewith he should intromit by virtue of the said Mr Thomas's right, and that the minor should redeem the lands from Ludquharn, by payment of the said sum, and annualrents thereof, which he should give to Mr Thomas, and which accordingly he paid to the said Mr Thomas; after which the minor pursuing reduction, by consignation only of the principal sum, the L. Ludquharn *alleged*, That no redemption could proceed, except that the annualrent which he debursed was also refunded to him, conform to the said decreet-arbitral, seeing he had profitably done the minor's affairs, by making the lands redeemable from the wadsetter, by payment of the principal sum, and the ordinary annualrents; whereas, if the wadsetter had uplifted the mails and duties of the lands, and which he would undoubtedly have obtained, if the decreet-arbitral had not intervened, the same would have extended to a far greater quantity; so that as he could not have redeemed from the wadsetter, but by payment of his principal sum and annualrents, even so, before they be redeemed from this excipient, he ought to be re-imbursed of that which he has profitably debursed.——THE LORDS found, That the pursuer needed not consign the annualrents debursed by the curators to the wadsetters, albeit the curator was content to accept the same now, and proponed not the same to cast the order, but that the lands ought to be decerned redeemed by consignation of the principal sum, and reserved his claim for the annualrents to be given in, as an article of the curator's accounts of his intromission with the minor's estate, and there to be claimed by him; but found, That in this redemption the minor could not be compelled to pay the same, albeit that the curator offered present count of his intromission with the duties of these lands, and that he alleged, that in his intromission with the minor's estate he was super-expended; and so the curator, who had acquired the wadsetter's right profitably, was put in a worse estate than if the wadsetter had retained the same, whereby he might have exacted greater profits and duties of the lands from the minor.

Alt. *Baird.* Alt. *Mowat.* Clerk, *Gibson.*

Durie, p. 580.

1636. *July* 10. GAIRDNER *against* CHALMERS.

No 155.
A minor, who was a notary, was not permitted to reduce on minority a bond

JOHN GAIRDNER intented a reduction of a contract, whereby he was obliged to infeft Alexander Chalmers in an annualrent of L. 40 by year, redeemable upon payment of 600 merks, upon this reason, That he was minor the time of the subscribing it.—*Alleged*, He could not be heard to reduce upon minority,

No 155.
written by himself, which it was alleged he had homologated, by payment of annualrent after majority, and this last fact was allowed to be proved *prout de jure*.

because that is granted only to minors that are circumvened through facility, and know not what they do; whereas the pursuer was a notary, and drew the contract with his own hand, and besides not far from majority; likeas, since his majority he had homologated the same, by payment of the said annualrent.—*Replied*, His quality of notary will not make him lose the benefit competent to minors. As to his homologation, it is only probable *scripto vel juramento partis*. ——THE LORDS, considering the quality of the pursuer, that he was a public notary the time of the subscribing the contract libelled, and was the drawer of it himself, sustained the last part of the allegeance, bearing the pursuer to have homologated the contract, by payment of annualrent since his majority, to be proved *prout de jure*, notwithstanding it was to fortify a contract reducible by law, whereby a minor had disponed his heritage.

Spottiswood, (MINORS and PUPILS.) *p.* 214.

*** Durie reports this case:

1636. *July* 19.—UMQUHILE WILLIAM GAIRDNER being addebted to Chalmers in the sum of 600 merks by his bond, whereupon John Gairdner being decerned as lawfully charged to pay, &c. and being charged, and for obedience thereof having given a new bond to the creditor, upon which he being charged, he suspends, and intented reduction upon this reason, viz. his minority when he subscribed the last bond; whereto it being *answered* by the charger, That he could neither suspend nor reduce upon that reason of minority, seeing the time when he subscribed the bond he was a notary, which being a public charge, presumes majority; and in fortification thereof, he offered to prove that since he was major, he paid annualrent for this same sum to the charger.—These exceptions *conjunctim* were found relevant, and the payment was found probable by witnesses, albeit the suspender and reducer *alleged*, That it was only probable by writ or oath of party, tending to make a null bond good, which was alike as if he were to prove the debt by witnesses; which the LORDS repelled, and found the same probable by witnesses, as said is, it being conjoined, that the bond was made by a notary.

Act. *Gibson.* Alt. *Heriot.*

Durie, *p.* 818.

1637. *February* 27. WEMYSS *against* CREDITORS.

No 156.
An allegeance, that a minor affirmed himself to be major at the time of granting a bond, is a relevant de-

UMQUHILE Mr John Wemyss minister, and his son John Wemyss as cautioner for him, being obliged to diverse persons in certain sums of money, the son convened all these creditors, to hear and see him restored *super capite minoritatis et læsionis*; and some of the creditors defending, *alleged*, That the pursuer could not quarrel the bonds given to them, because at the time of the subscribing of