

No 50.

non tenebatur placitare, and also the other defence foresaid, and they sustained the action of recourse against the warrandice lands.

Fol. Dic. v. 1. p. 589. P. Falconer, No 51. p. 28.

* * * Harcarse reports this case :

ONE having disposed kirk-lands with absolute warrandice against all evictions, perils, dangers and inconveniencies, and there being three acres thereof afterwards designed for a glebe, the buyer raised a declarator of eviction against the disponent's heir, who was minor.

Alleged for the defender ; That *minor non tenetur placitare*, this process having the effect of a reduction.

“ THE LORDS repelled the defence.”

Harcarse, (MINORITY.) No 704. p. 198.

No 51.

1685. February 4. GORDON of Fechil *against* FARQUHAR of Moonie.

In a reduction upon the act of Parliament 1621, against a minor, of a right granted to his father ;

It was *alleged* for the defender ; That *minor non tenetur placitare*.

Answered ; It was *dolus paternus et fraus* to take a disposition without an onerous cause, *post contractum debitum*.

“ THE LORDS sustained the minor's defence, and refused to make him find caution, which they thought to be difficult for a minor who had his lands questioned ; but allowed the pursuer to lead a probation by witnesses to lie *in re-tentis*, which he might use in the discussing of the reduction.”

Harcarse, (MINORITY.) No 716. p. 202.

No 52.

The brocard is not effectual in any process for making good the right of a purchaser of lands.

1720. June 27. SIMON M'KENZIE *against* DONALD M'KENZIE.

MR SIMON M'KENZIE of Allangrange standing infeft in these lands with the pertinents, pursues Donald M'Kenzie of Kilcowie in a molestation, and declarator that the defender ought not to disturb and molest him in the peaceable possession of the bog of Drummore, which is not only an uncontroverted part and pertinent of the barony of Allangrange, but was so found by an indenture and decret-arbitral in 1677, and craving it may be found to pertain and belong to him in property. *Alleged* for Kilcowie, the defender, That in so far as he libelled a molestation, *non facit vim*, he was willing to answer ; but having accumulated in this process likewise a declarator of property, he was minor, and so had the benefit and privilege of the maxim, *quod non tenetur placitare super*