

No 38.

1583. July. HAMILTON against CAMBUSKEITH.

JOHN HAMILTON having gotten a contract transferred before the Commissary of Glasgow, against the Laird of Cambuskeith, who was minor and pupil, wherein he was obliged to infest the pursuer in certain lands, he charges the minor and his tutor for fulfilling of this contract. They suspended upon this reason, that he was minor, *et non tenebatur placitare super hæreditate*, for if he were decerned to infest the charger conform to the contract *privaretur sua hæreditate*; wherein he was infest. *Answered*, The question was not *in placito contra minorem*, but *in executione rei judicatæ*. THE LORDS found the decret should be put to execution against the minor, and found the letters orderly proceeded.

Fol. Dic. v. I. p. 589. Spottiswood, (MINORS AND PUPILS.) p. 211.

* * * Colvil reports this case :

JOHN HAMILTON, son to Agnes Stuart, and to the umquhile tutor of Cambuskeith, pursued the Laird of Cambuskeith, minor and pupil, and the Laird of Hesilwood, his tutor *pro suo interesse*, for the fulfilling of a contract which was transferred to the said pupil, and that by decree of the Commissaries of Glasgow. The tutor, in name of the pupil, obtained suspension, *alleging*, that he was *minor annis et non tenebatur placitare, &c.* The cause wherefor he was charged was to infest the said John into some lands which the pupil's grandfather, and to whom he was heir by lineal progress, was obliged and bound to do the same; and the said pupil was already infest in the said lands as heir to his grandfather; and so he *alleged*, if he was decerned to infest the said pursuer *privaretur hæreditate in minori ætate*, the which was repugnant directly to the law foresaid. To this was *answered*, That the present question and pursuit was not *in placito contra minorem*, but it was *in executione rei judicatæ contra minorem*, and for the fulfilling of a decree, the which was already transferred *in minorem*. There were practiks *hinc inde* produced. THE LORDS found by interlocutor, that the decree should take execution *contra minorem*, and so repelled the reason of the summons.

Colvil, MS. p. 372.

No 39.
Found in
conformity
with the
Queen's Ad-
vocate against
Wemyss, No
32. p. 2289.

1693. January 7. DRUMQUHASIL against CUNNINGHAM.

THE Laird of Drumquhasil pursued his brother, the Priest of Dumbarton, and Cunningham, heir of umquhile John Cunningham of Clanady, to produce a tack of the teinds of the kirk of ———, set by the Abbot of Kilwinning to the said umquhile John Cunningham; and the assignation alleged made to the said Priest, of the date of ———, together with whatsoever other tack

or tacks set to them or any of them, of the said teinds by the said Abbot, to hear and see the same improven with certification, &c. It was *alleged*, That no certification could be granted upon the general clause anent whatsoever other tacks; because nothing could be improven for non-production, but that which is called for. Notwithstanding of the which allegiance, the LORDS found that the pursuer calling for a particular tack, of a special date and tenor in all substantial points, the desire of his summons was always relevant anent the general clause of all other tacks, because it contained the special designation of the person setter, of the receiver and of the teinds. Farther, it was *alleged*, That there could be no action given against this defender, Cunningham of Clinglie, because he was minor *et non tenebatur placitare*. Which allegiance was repelled, because minors have no privilege in improbations, especially *cum agitur de facto vel dolo paterno*.

Fol. Dic. v. 1. p. 569. Haddington, MS. No 290.

No 39.

1607. February 5. LORD ELPHINSTON against LORD SALTON.

My Lord Elphinston being pursued by Lord Salton, the Lady Dumbreck Lesly and Alexander Montrare, for production of their infeftments of the lands of Dumbreck, to hear and see them reduced at his instance, as assignee to Towey Barclay; it was *alleged* for Lesly, That no process could be given against her, because she was neither summoned personally, nor at her dwelling-place, but only by open proclamation, without any such privilege granted by the summons, which allegiance was found relevant, In that same cause the LORDS found, that, albeit she was minor, nevertheless *tenebatur placitare super hereditate*, because the reason of her reduction was alienation after inhibition. In the which cause, both the buyer and the seller were *in mala fide*, and so she being convened, seeing *dolo predecessoris*, could have no delay by her minority; therefore the defender compeared for Alexander Montrare, and *alleged*, That no certification could be granted against him for non-production of his author Lesly's infeftments; because the LORDS had found no process against her. It was *answered*, That Lesly's father being denuded of his right to the said lands in favour of the said Montrare to be holden of the superior, the evidents went with the land, and it was sufficient to the pursuer to call him that was *in tenemento*, as well for production of his author's infeftments as his own; and if he produced not, he would get certification against him for non-production of the hail; albeit his author or heirs were not called, no certification could be granted against his evidents; because albeit, by the alienation, the right of these lands was acquired to the buyer, yet the seller being bound in warrandice, would retain his own evidents whereby to defend himself and him to whom he had sold the land, in case any quarrel were moved against the same; and

No 40.

Minor tenetur placitare, being called for annulling a disposition made to his predecessor after inhibitions, quia predecessor erat in dolo.