

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 infestments 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 infestments; 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 infestments 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.*

No 40. that the Lords had so decided an action of reduction pursued by the Laird of Polmais against the Laird of Redsall, for non-production of the infeftments pertaining to the Laird of Stramerie who was his author, because Stramerie's heirs were not called. THE LORDS ordained the parties to produce the practicks; and because the pursuer produced no practick, the LORDS sustained the matter to rest undecided, and thought meet that they should summon Lesly by a prillieged summons.

*Fol. Dic. v. 1. p. 589. Haddington, MS. No 1287.*

No 41.

In recognitions the maxim *minor non tenetur* is not receivable.

1609. February 22. HEPBURN against YULE.

IN the action of recognition pursued by Sir Robert Hepburn against Yule, the LORDS found, that the minority of the defender could be no stay to the recognition; because albeit *minor non tenetur placitare super hereditate*, that it is only understood in reduction of his infeftment in default of his right *in placito de recto*; but the recognition quarrels not the validity of his right, but urges that his right may be declared amitted for his fault or his predecessor's.

*Fol. Dic. v. 1. p. 590. Haddington, MS. No 1571.*

No 42.

1610. March. LORD SANQUHAR against LAIRD OF JOHNSTON.

IN improbations a minor must produce, or else certification will be granted against him, and the exception *quod minor non tenetur placitare super hereditate* is not received against improbation *ne pereat modus improbandi*.

*Fol. Dic. v. 1. p. 589. Haddington, MS. No 1838.*

No 43.

1613. June 25. LORD MADDERTY against VASSALS.

A SUPERIOR pursued the heir of his feuer for reduction of his feu charter 'propter non solutum canonem,' according to the provision and clause irritant in the feu-charter, and the defender being minor, and *alleging quod non tenetur placitare super hereditate* his exception will be repelled against the exhibition.

*Fol. Dic. v. 1. p. 590. Haddington, MS. No 2530.*

No 44.

1624. November 19. LORD INCHAFFRAY against MITCHELL.

IN an action of reduction of a feu upon the clause irritant, pursued by my Lord Inchaffray *contra* one Mitchell, the LORDS found that a minor *tenetur pla-*