

- 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-*

citare, because he was convened for the fault of his father, *ex mora conventionali*, and they intended to the contrary, *ex mora legali*.

Fol. Dic. v. 1. p. 590. Kerse, MS. fol. 146.

No 44.

1633. February 20. LENOX against M^rMORAN.

IN a reduction of a feu *ob non solutum canonem*, upon the act of Parl. 1597, cap. 250, the defence *minor non tenetur* was repelled, though there was no conventional irritancy.

No 45.

* * This case is No 38. p. 6435, *voce* IMPLIED DISCHARGE and RENUNCIATION.

* * See Inchaffray against Mitchell, *supra*, in which case the defence was repelled where there was a conventional irritancy, but the Court were of opinion, it ought to be sustained where the *mora* was *ex lege*.

Fol. Dic. v. 1. p. 590. Durie. Auchinleck.

1675. July 27. ROBERTSON against STUART.

ROBERTSON of Inver pursues a molestation against Gilbert Stuart, for molesting him in the possession of a piece of land, called the boat-bank and boat-brae, and of the free passage of a ferry-boat there. In which summons of molestation there is also a declarator of right. The defender *alleged* no process, because he is minor, *et non tenetur placitare super hæreditate paterna. 2do*, No process till the superior be called.

THE LORDS found that the declarator could not proceed against the minor, and as to the molestation, they found that if the pursuer was in recent possession, the defence was not relevant against the possessory judgment to continue the possession, and to exclude molestation, and that there was no necessity to call the superior as to that part.

Stair, v. 2. p. 362.

No 46.

The exception, *minor non tenetur placitare*, was found relevant against a declarator of property raised against the minor's father, but not sustained against a molestation, if the pursuer were in recent possession.

1676. July 8. YEAMAN against CHILDREN of OLIPHANT.

THE LORDS found that *minor tenetur placitare*, if the heritage was questioned by a pursuit intended against his predecessor.

No 47.

Fol. Dic. v. 1. p. 590. Gosford.

* * This case is No 15. p. 9068.