

S E C T. X.

No Restitution till the other Party be restored.—Whether a Minor, who follows a Profession, can be restored?

1576. *June 26.*M'WILLIAM *against* SHAW.

No 151.

A minor insisting upon minority and lesion, must first make offer of what he received in contemplation of the bargain.

ANENT the action pursued by N. and M'William against John Shaw, for reduction of a contract and infeftment passed thereupon, the pursuer *alleged*, That they should be reduced; because, the said contract and infeftment were made by him in his minority. The defender *alleged*, That the pursuer had no place to call for reduction, without he had offered the sum of money which he had received for the infeftment of the lands contained in the contract; which allegiance of the defender was admitted by the LORDS, and the other repelled *ab agendo*, until he restored the said money.

Fol. Dic. v. 1. p. 584. Colvil, MS. p. 253.

1628. *March 22.*FARQUHAR *against* CAMPBELL.

No 152.

A MINOR having kept a tack, whereof his father was in possession, and being charged to enter heir, offers to renounce. *Answered*, He could not now renounce, in respect of the tack which he has possessed since his father's decease.—THE LORDS found he might renounce, restoring the benefit which he made of the tack to all parties having interest.

Auchinleck, MS. p. 131.

* * Durie reports this case:

IN an action by Robert Farquhar, as assignee to the L. of Carnehill, against George Campbell, as lawfully charged to enter heir to Campbell of Quinziecleugh his father, who was obliged in some money to the pursuer's cedent, for payment of the said sum, the defender offering to renounce to be heir; and the pursuer *contending*, That he could not renounce, seeing *se immiscuit* by intermitting with the duties of certain lands diverse years after his father's decease, whereof his father was heritor, or tacksman at least, which were bruiked by his father *per tacitam relocationem*, the time of his decease; and the defender *replying*, That there was a decret of improbation against him, decerning all right whatsoever made to his father to make no faith, whereby he could not be reputed heir for any intromission he had of the said lands, seeing he stood obliged,

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 brüiked 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 decret of improbation, but which was only obtained since the defender's father's decease, against the defender's self, and was neyer intended against his father, and so cannot purge the defender's entry after his father's decease, and before that decret of improbation, and which cannot make him cease to have succeeded therein to his father. Likeas, notwithstanding of that decret, 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 decret foresaid would make the defendèr 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.

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.

No 153.

Auchinleck, MS. p. 133.

1631. March 10.

LA. HADDO against L. LUDQUHARN.

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 infestment 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 decret decerned Ludquharn to pay to Mr Thomas the said principal

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