

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-

No 154.
 setter, had de-
 bursed the an-
 nualrents, in-
 sisted that
 they should
 likewise be
 consigned.

sum, together with the annualrent at 10 per cent. for so many terms as he wanted the profit of his money, and ordained him to assign his right to Ludquharn, for his security of the money, to be so debursed by him, and him to be accountable to his minor for the profits of the said wadset land, wherewith he should intromit by virtue of the said Mr Thomas's right, and that the minor should redeem the lands from Ludquharn, by payment of the said sum, and annualrents thereof, which he should give to Mr Thomas, and which accordingly he paid to the said Mr Thomas; after which the minor pursuing reduction, by consignment only of the principal sum, the L. Ludquharn *alleged*, That no redemption could proceed, except that the annualrent which he debursed was also refunded to him, conform to the said decret-arbitral, seeing he had profitably done the minor's affairs, by making the lands redeemable from the wadsetter, by payment of the principal sum, and the ordinary annualrents; whereas, if the wadsetter had uplifted the mails and duties of the lands, and which he would undoubtedly have obtained, if the decret-arbitral had not intervened, the same would have extended to a far greater quantity; so that as he could not have redeemed from the wadsetter, but by payment of his principal sum and annualrents, even so, before they be redeemed from this excipient, he ought to be re-imbursed of that which he has profitably debursed.—THE LORDS found, That the pursuer needed not consign the annualrents debursed by the curators to the wadsetters, albeit the curator was content to accept the same now, and proponed not the same to cast the order, but that the lands ought to be decerned redeemed by consignment of the principal sum, and reserved his claim for the annualrents to be given in, as an article of the curator's accounts of his intromission with the minor's estate, and there to be claimed by him; but found, That in this redemption the minor could not be compelled to pay the same, albeit that the curator offered present count of his intromission with the duties of these lands, and that he alleged, that in his intromission with the minor's estate he was super-expended; and so the curator, who had acquired the wadsetter's right profitably, was put in a worse estate than if the wadsetter had retained the same, whereby he might have exacted greater profits and duties of the lands from the minor.

Alt. Baird.

Alt. Mowat.

Clerk, Gibson.

Durie, p. 580.

No 155.

A minor, who
 was a notary,
 was not per-
 mitted to re-
 duce on mino-
 rity a bond

1636. July 10.

GAIRDNER against CHALMERS.

JOHN GAIRDNER intented a reduction of a contract, whereby he was obliged to infest Alexander Chalmers in an annualrent of L. 40 by year, redeemable upon payment of 600 merks, upon this reason, That he was minor the time of the subscribing it.—*Alleged*, He could not be heard to reduce upon minority,