

No 57.

1609. January 17. LAIRD of ROSSYTH against ———.

THE Laird of Rossyth pursued a reduction of alienations made by him in his minority to his lesion. One of the defenders *alleged*, That he was minor *et non tenebatur placitare*. It was *answered*, That the pursuer's action was founded upon his lesion in his minority, *et sic minor contra minorem non guadet privilegio ætatis*. It was *duplied*, That the pursuer was not minor, and so not privileged; notwithstanding whereof, the LORDS repelled the exception, in respect of the nature of the cause.

Fol. Dic. v. 1. p. 591. Haddington, MS. No 1534.

No 58.

The privilege
minor non
tenetur found
not to ex-
clude reduc-
tion of a de-
cree obtain-
ed by a minor
against a
minor.

1680. June 18. LYELL against DONES.

SARAH LYELL being infest in a tenement in Edinburgh as heir to her father, and there being a decret of removing obtained against her at the instance of Mary and Elizabeth Dones, she raiseth reduction of the decret of removing, on this reason, that the Dones' right proceeded *a non habente potestatem*, the common author being first denuded in favour of Lyell. The defender alleged no process, because they are minors, and so not holden *placitare de hæreditate paterna*. The pursuer *answered*, That she is also minor, *et privilegiatus contra privilegiatum non utitur privilegio*. But, *2do*, Lyell having been in possession before the decret of removing, and having continued her father's possession, the Dones having obtained decret of removing against her, this reduction is in defence of her right, and her own and her father's possession, and therefore the Dones ought either to restore the possession, or dispute their right.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 591. Stair, v. 2. p. 771.

See APPENDIX.