

1682. December.

The BISHOP of DUNKELD against The LAIRD of ABERLADY and his Tutors.

THE LAIRD of Aberlady having got a right to the patronage of a church, which was anciently a patrimonial church of the bishoprick of Dunkeld, and resigned in the King's hand in the year 1595, in favour of Aberlady's authors, and contained in his several rights and infeftments from the King; the now Bishop of the diocese raised reduction of the said right of patronage, as being a dilapidation of the patrimony of his church.

*Alleged* for the defender, That he is minor; and therefore *non tenetur placitare*.

*Answered*; Minors are only privileged for answering in reductions of rights of lands and property, King William's statute, cap. 39. Regiam Majest. lib. 3. cap. 32. No 17. And the subject of the present reduction is but a patronage, which is but an inconsiderable right, and not profitable. 2. The defender first provoked to judgment, by raising process for declaring that the pursuer ought to collate the person whom the defender had presented to be minister.

“THE LORDS found, that the defender *tenetur placitare* in this case, in respect he was the first provoker; and that although the title of his declarator was only founded on his last infeftment from the King, he ought to defend the first right proceeding from the Bishop, seeing all posterior rights were but consequential thereof.

*Harcarse, (MINORITY.) No 703. p. 198.*

1685. February 20.

BONNAR against LYON.

BONNAR of Kinnettes having bought a parcel of kirk-lands from Lyon of Bridgeton, with absolute warrandice from all perils and inconveniencies whatsoever, and having likewise certain lands disposed to him, in warrandice of these lands; the principal lands being evicted by a designation for a minister's glebe, Bonnar pursues an action of recourse against the warrandice lands. And it being *alleged* for Lyon of Bridgeton, That *minor non tenetur placitare*; 2do, Although he were major, yet the lands principally disposed being kirk-lands, which of their own nature are liable to be designed, the clause of warrandice cannot be thereto extended, warrandice being only in relation to the right; and this being inherent to the nature of the lands, and not any defect of the right, he could have no recourse: THE LORDS found, that the clause of warrandice, being an absolute warrandice, against all perils and inconveniencies whatsoever as law will, and that this eviction not having proceeded from any supervenient law, but according to the law standing the time of the disposition, they repelled the defence of *minor*

No 49.

When the minor is the first provoker, he has no privilege.

No 50.

A person having sold lands, the brocard cannot save his heir, a minor, from being liable for warrandice upon eviction.