

No 33. to him by the said Lady and Priests, "dolose infeodavit dictum suum filium in eisdem;" and so, said she, that alienation "dolo et fraude ut perfecta de jure erat retractanda. Procurator Jacōbi minoris dixit eum non compellendum respondere in hac causa, ex eo quod erat super hæreditate sua, super qua ipse ætate minor annis placitare non tenetur de jure regni, nisi in quatuor casibus in Regia Majestate expressis, de quibus casibus presens non erat unus; et quod in similibus casibus, sic sæpe practicatur; et ideo petiit se absolvi ab instantia judicii usque ad perfectam ætatem.—THE LORDS decerned the said James to answer, notwithstanding his allegiance; because, "agebatur hic de retractatione dolose infeodationis hæreditariæ sibi per patrem suum facti, retent. in manifestam fraudem dictæ Dominæ, et quod minor non deberet locupletari cum jactura alterna, et de dolo patris sui, et quod iniquum valde foret, si pre-textu minoris liceret patribus sic defraudare alios, et quod suaudente equitate, in hoc casu licite possit judex a stricto illius juris municipalis regni Scotiæ (de quo supra) severitate recedere, attento etiam quod jus regni prædictum deberet maxime intellegi in minoribus, qui habent suos legitimos gubernatores, non iis qui orbi parentibus possent forsan gravissime lædi, si de sua hæreditate placitare cogerentur; sed hic minor habebat patrem suum superstitem adhuc, et fraudulentum, et dolosum; et similiter suadente equitate ad exonerandam conscientiam, Jacobi quinti Domini Consilii discreverant statim post mortem suam, Reginam Mariam reddere super reductione resignationis Domini de Dalbeyt, facti per Dominum ejusdem in manibus Regis prædicti ad perpetuam remanentiam.

Fol. Dic. v. 1. p. 589. Sinclair, MS. p. 85.

1574. November 16.

ABBOT of DUNFERMLINE against The HEIRS of MR GEORGE CRICHTON.

No 34.

ANE minor may be compellit to enter in pley in ony actioun or cause concerning his heritage, gif the samin was intentit agains his predecessour, swa that litiscontestation was maid thairin befor his predecessouris deceis.

Balfour, (MINORS.) No 11. p. 333.

* * * Colvil reports this case :

1574. November 16.—The abbot of Dunfermline pursued Martin Crichton of Cranston-Riddell, and Mr Robert Richardson prior of St Mary's Isle, for recognition of certain lands immediately holden of him, by service of ward and relief, alleged to be analized by the said Martin, present prior thereof, without consent of the said abbot superior thereof. At the calling of the summons compared Mr George Crichton, and desired to be admitted for his interest, and

was admitted, wherein protestation was made betwixt the said abbot and Mr George, after long reasoning and diverse allegeances. And in the mean time Mr George died, and left behind him two daughters, the eldest thereof of ten years of age, whom the abbot called to hear and see the said matter transferred in their heirs foresaid. The bairns *alleged*, That no action should be transferred or pass in them, contrary to the deprivation of their heritage during the time of their minority.—The abbot *alleged*, That in respect the process was begun in their father's time, and litiscontestation made after diverse allegeances, wherefore it should be transferred, notwithstanding their minority; which allegeance of the Abbot the LORDS found relevant, and ordained the process to be transferred in the said minors, notwithstanding their minority, in the same state as it was the time of their father's decease, in respect of litiscontestation made in their father's time, and against them.

In the foresaid action the minors *alleged*, That no action could be had against them in this matter, because they were not as yet served as heirs to their father.—The Abbot of Dunfermline *alleged*, That they two were charged by the King's letters to enter heirs to their father at a certain day, with certification that if they fail, that sicklike process should be given against them, as if they were entered, and for verification thereof, produced letters duly executed and indorsed.—The daughters minors *alleged*, That the indorsation was false and feigned, and offered them to improve the same as accords of the law.—The Abbot *alleged*, That notwithstanding the improbation, the process should not stay in the mean time; for by the practice, where any take to improve the execution of a summons, it stays not the process.—The defender *alleged*, That these letters were of another nature than a common summons, because these letters are a charge to do a deed, as to enter heir to their father; and also the Abbot pursuer has used these letters of charge *in modum probationis*, to instruct his action, and therefore the process should stay in the mean time; which allegeance of the defenders was found relevant by the LORDS; and assigned to them a day to improve the indorsation foresaid, and ordained process to stay in the mean time.

Colvil, MS. p. 242.

1581. July.

SCOTT against KINCAID.

ALEXANDER SCOTT burgess of Edinburgh, pursued one Edward Kincaid pupil, Scott his mother, and David Couris her spouse, for his interest, to hear and see certain infeftments, with the sasines, and all that followed thereupon, of certain acres of land, with other infeftments, and given in clause of warrandice, to be reduced, retreated, and rescinded. The principal reason of the summons was, because umquhile James Kincaid maker of the said infeftments, and giver of the said sasines, of his own motive will, uncoacted or compelled, with consent

No 35.

Found in conformity with Queen's Advocate against Wemyss, No 29. p. 9089.