

S E C T. IV.

Privilegiatus contra Privilegiatum.

1546. May 13.

The BISHOP of MURRAY *against* The PROVOST of ST ANDREWS.

No 54.

ANE minor sould answer upon his heritage, beand persewit be ane uther minor, or be the kirk, quhilk is understuid ever to be minor; and ane minor may not bruik or joise ony privilege of minoritie contrare ane uther minor.

Balfour, (MINORS.) No 12. p. 333.

*** Sinclair reports this case :

1547. May 13.—THE Bishop of Murray, commendator of Scone, called Patrick Learmont, son to the Provost of St Andrews, for reduction of a feu made by the said commendator and convent *per metum*.

Mr James M'Gill, procurator for Learmont, *alleged* he was minor annis secundum leges Scotiæ in Regia Majestate, ergo non debet compelli litigare in hoc casu, viz. super re hæreditaria sibi pertinenti in feudo jure hæreditario; et duxit simile decretum Dominorum Concilii nuper latum inter _____ et _____. Nihilominus allegabat quod quia ipse agebat nomine ecclesiæ quæ semper censetur jure minoris, et ut minor, et ideo minor supra minore privilegio non gaudet; item quod nuper Domini in causa, Domini de Morton contra Reginam de retractatione resignationis, per ipsum factum in manibus illustrissimi principis Jacobi quinti sui patris ad remanentiam perpetuam, exceptione minoris ætatis Reginæ præposita per advocatum suum, interlocuti sunt eum placitare debere, jure illo Regiæ Majestatis non obstante; ideoque lex illa videtur dura, et contra rationem, quia ex dolo vel metu suo, vel alterius res apud minorem usque ad perfectam ætatem suam permaneat cum magno incommodo alterius, et ita Domini hoc per suam interlocutoriam deciderunt, Patricium reddere debere in hoc casu.

Sinclair, MS. p. 75.

1580. March. ABBOT of NEWBOTTLE *against* TENANTS.

No 55.
Found in conformity with the above.

THE Abbot of Newbottle pursued certain of the tenants for reduction of their feu-charter. Compeared one called Cavers, and *alleged*, that he was minor

annis et quod non tenebatur placitare super hæreditate. It was answered by the Abbot, That he was convened *super facto paterno*; and also, that he could allege no privilege of minors against the said Abbot; being a kirk man, who was alike privileged as he was, *et privilegiatus adversus privilegiatum non gaudet privilegio.* The which allegiance was admitted by the LORDS, and the defender ordained to answer, notwithstanding his minority.

Fol. Dic. v. i. p. 591. Colvil, MS. p. 296.

No 55.

1582. July.

FLEMING against LORD FLEMING.

MRS JEAN FLEMING, as only lawful daughter and nearest heir to umquhile Lord Fleming, who died in France, as Ambassador at the Queen's marriage, pursued my Lord Fleming, her father's brother's son, to hear and see certain infestments and retours to be reduced, as given by him who had no power to give the same. It was first of all answered by the said Lord, That he ought not to enter in plea, *quia fuit minor annis et sasitus in tenemento.* To which was answered, That the gentlewoman was alike privileged, *nam fuit causa dotis, et fuit puella adhuc indotata, et 'dotium causa,' ut ait l. i. D. Solutio matrimonio 'semper et ubique præcipua est, nam rei publice interest, dotes mulieribus conservari;* and so the law made 'Generaliter' could have no place against the pursuer; and also of necessity, *et ex necessitate legis,* the pursuer ought to have process into the reduction of the retour, otherwise she would be debarred *in perpetuum ab agendo,* by reason of the act of Parliament, that if the reductions of retours be not pursued within the space of three years after giving furth of the same, they will not be heard thereafter to pursue, and the action will prescribe. To this was answered, That the law 'Generaliter,' made in favours of the minors, had but these exceptions from it, which were *de debitis paternis propriis aut de nova dissasina;* and, except the pursuer would allege her action to be comprehended under one of these, she could have no action to pursue the said Lord to be decerned to enter into plea; and as to the law of the prescription of retours, that is to be understood of the retours by incident process, as was not in this case. There were practicks alleged *pro et contra* upon both sides.—THE LORDS found by interlocutor, that the said Lord should answer, notwithstanding of his less age. "Multo immovebat Dominos consideratio personæ quæ fuit puella provecta ætate, et regia, et propinquior hæres lineæ directæ domus et familias de Fleming. Agebatur etiam alimentaria causa. Nonnulli tamen Dominorum in contraria feurunt opinione."

Colvil, MS. p. 338.

No 56.

A minor was found obliged to answer to suit of a Lady *causa dotis.*