

tive, if decreets of the sovereign Judge *in actione tutela et rationum reddendarum* could not secure tutors. THE LORDS repelled this allegiance, and ordained the pursuer yet to be heard, to allege what he may say justly against the fore-said counts, given in by his tutor, and so ordained them to meet before one of their number, whom the LORDS nominated to be their auditor, and to give in the articles of the counts, and answers thereto, notwithstanding of the prior sentence.

Act. *Lawrence Oliphant.*Akt. *Hobo.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 583. Durie, p. 863.*

No 138.

1666. December 15.

HARTSHAW against HARTWOODBURN.

Scot of Hartshaw pursued a declarator of property within the bounds libelled, and that he had been in possession by pasturing, and doing other deeds of property, and debaring the defender Hartwoodburn and his predecessor. In this process there was an act of litiscontestation; whereof a reduction was intended, upon that ground, that the defender was absent, and was minor and *indefensus*, wanting tutors and curators for the time, his tutor, being dead; and that he had a defence *minor non tenetur placitare*.

THE LORDS found, if the summons had concluded the possessory of molestation, and if that had been libelled, that the pursuer, the time of the intending the pursuit, was in possession, they would have repelled the defence (that *non tenetur*) against the molestation; but because a declarator of right was only libelled, they reponed the minor, and found that *non tenetur placitare*.

For Hartwoodburn, *Longformacus.*For Hartshaw, *Sir George M<sup>c</sup>Kenzie.**Fol. Dic. v. 1. p. 583. Dirleton, No 64. p. 27.*

No 139.

1672. February 9. COCKBURN of Piltoun against HALYBURTON and BURNET.

COCKBURN of Piltoun as assignee by William Tours, who was infest in an annualrent in the estate of Inverleith for his portion, being 8000 merks, obtained a decret of poinding of the ground against Halyburton who had bought the land; which now being suspended, and reduction raised, it was *alleged*, That Halyburton was minor, and that a relevant defence was either omitted, or not clearly and fully debated, which if it had been done, or were now to do, the LORDS would surely sustain the same; but being overly proponed, the same was repelled upon a report. It was *answered*, That albeit minors may be restored against decreets *in foro*, where they have omitted any point in fact, yet they have no privilege to quarrel the Lords' interlocutor upon injustice and inconsideration, and therefore cannot pretend that their allegiance might have

No 140.

Competent, and omitted, is not a proponable objection against a minor. The Court in this case avoided deciding the question, whether a minor can be restored against proponed and repelled.