

No 17.

It was *alleged* for the pursuer; That minors were only privileged against reduction of their father's heritage, and not against reduction of rights conquest by them. *2do*, The pursuer's father was never infeft. *3tio*, A minor who claims this privilege of being continued in possession during his minority, ought to be infeft, *Reg. Majest.* lib. 3. cap. 32. No 3. and the defender is not infeft, for should he chance to die after some years intromission, the pursuer, though prevailing in the reduction, might run the hazard of loosing these years rents, seeing the next apparent heir might pass by the minor, and evade a representation.

*Answered* for the defenders; *Perinde est* whether the father's lands were heritage or conquest, Hamilton *contra* Matthison, No 6. p. 9057.; Pringle *contra* Ker and Earl of Home, No 7. p. 9059.; *2do*, It appears by the said last practise, that infeftment in the defunct's person was not required to give his son, the minor, the privilege of the brocard; besides, the defender's father's right was an assignation to an adjudication whereupon a charge had followed at the cedent's instance, which must be considered as equivalent to an infeftment. *3tio*, The minor needs not to be infeft, seeing that would subject him to a representation, if not revoked *debito tempore*; and till the event of the reduction he could not know if it would be proper for him to revoke or not.

THE LORDS repelled the first and second allegiance made for the pursuer, in respect of the answers; but sustained the third and second, that by King William's statute, cap. 39th, the brocard 'minor non tenetur placitare' can only be proponed by minors who had real rights by infeftment, or diligences of apprising, &c. *habili modo* established in their person. Though some of the LORDS were of opinion, that the offering unquestionable security for the rents *medio tempore* uplifted by the minor, might satisfy the interest of the pursuer of the reduction, that the minor might not be put to represent the defunct.

*Harcarse*, (MINORITY.) No 706. p. 199.

No 18.

1694. November 21. ROBERT DAVIDSON *against* JAMES ALCORN in Kelso.

THIS was an action for mails and duties, wherein the defender excluded him with a prior right, which made the pursuer repeat a reduction *ex capite inhibitionis*. *Answered*, I am minor, and my father died in possession, and so *non tenetur placitare*. *Replied*, That takes only place in ancient inheritances, and not in wadsets and redeemable rights, and it is not good as to the warrandice-lands. THE LORDS found the maxim behoved to defend him as to the principal lands whereof he was in possession, but not as to the warrandice-lands during the not eviction; and therefore refused process in the reduction as to the principal lands. See 31st January 1605, Kello, No 11. p. 9063.

*Fol. Dic. v. I. p. 588. Fountainball, v. I. p. 644.*