

S E C T. III.

No privilege where the process is founded upon the predecessor's deed.—Nor where action was commenced against the defunct.—Nor where the Minor is the first provoker.

1546. *March 1.* The QUEEN'S ADVOCATE *against* WEMYSS.

THE LORDS decerned David Wemyss, second son to the Laird of Wemyss, to answer upon the improving of his instrument of sasine of the lands of K, for which the Queen's Advocate called him to produce the same, to hear and see it civilly improven, notwithstanding the said David's procurator alleged, that he was "minor annis et agebatur hic super hæreditate sua, et annullatione suæ sasinæ hæreditariæ, et de jure Scotiæ minor non tenetur placitare; nisi in quatuor casibus relatis in Regia Majestate Scot. Domini hanc allegationem repulerunt ratione iniquitatis ejusdem; nam esset iniquum quod minor ex suo suorumve dolo et fraude, in conservatione falsi instrumenti repertaret commodum, et quare periculum erat in mora; quia, si probatio deferretur in perfectam ejus ætatem, forte possent interea testes instrumentarii perire, et sic instrumentum iniquum posset improbari, et ideo ut veritas illucesserit. Interlocuti sunt Domini, ut supra, licet hic casus consequenter auferat minori hæreditatem, viz. instrumento probato simulat. Extat practic. contra Reginam, quæ decreta fuit per interlocutoriam Dominorum Concilii, respondere super retractatione resignationis Domini de Dalbeyt facti ad perpetuam remanentiam in manibus illustrissimi quondam patris sui Jacobi quinti Scotorum Regis, per Dominum de Dalbeyt, in qua causa exceptio minoris ætatis Reginæ fuit repulsa."

Fol. Dic. v. 1. p. 589. Sinclair, MS. p. 71.

No 32.

The brocard was found not to take place in a reduction, upon the dolo or fraud of the minor's predecessor.

1548. *February 12.* LADY SETON *against* COCKBURN.

THE Lady Seton called Al. Cockburn of Harpenden, and James Cockburn his son, of five or six years old, or thereby, to hear the heritable sasine of the lands of Harpenden, given by the said Alexander to his said son, reduced and retreated; because the said Alexander, immediately following the giving thereof, had annalized twenty-six merks annual, out of the said lands, to the said Lady, and the Priests and College Kirk of Seton, and given them charter and precept of sasine; and, before they got sasine, great sums of money paid

No 33.

Found in conformity with the above.