

1567. February 12. LAIRD of BARNEBUGIL against HAMILTON.

IN the action against David Hamilton, for restitution *in integrum*, of certain lands anailized by the foresaid Laird of Barnbugil, in his minority, to the said David; it was *alleged* by the said David, That the said Laird should not be restored, because he had sworn by his oath to observe and keep the said alienation, and never come in the contrary thereof. It was *alleged* by the said Laird, That he should be restored notwithstanding of the said oath, because the said oath was given in his minority, likeas when the said alienation was made he might have been circumvened and induced to make the same in his minority, sicklike he might have been induced to make the said oath; and also it has been the practice wherefore such oaths have been objected in diverse matters and repelled; which allegiance of the said Laird was admitted, in respect of diverse practicks of before, notwithstanding the allegiance of the said David.

*Fol. Dic. v. 1. p. 575. Maitland, MS. p. 182.*

No 15.  
A minor was restored against alienation of lands although he had given his oath never to come in the contrary.

1582. June.

GORDON against EARL of ERROL.

THE Laird of Pitlurg, Gordon, pursued for letters conform to a decree-arbitral given between him and the Earl of Errol, and the said decree was given by the Earl of Huntly, being *minor annis*, unto whom the said parties compromitted by a blank. It was *alleged* by the said Earl, that no letters ought to be given, because the said submission and compromit, whereupon the said decree past, was null of itself, by reason the submission was made to the Earl of Huntly *minor annis*; nam de jure minor annis, arbiter esse non potest, cum L. 41. D. De recept. arbit. aut ullo modo judex, L. 57. D. De re judicata, ac etiam de jure nostro municipali, prout in L. 2, regia majestate L. servis autem. To this and to the laws was *answered*, That the parties had homologated the submission, and compromitted by submitting of a blank; and as to the laws they were understood except the parties had not consented *in predictum comitem*, by the subscribing of a blank, and also the laws appear to be understood, de arbitrio et non de arbitratore et amicabile compositore; and there is great difference inter arbitrium et arbitratorem, sivi amicabilem compositorem, ut notatur per Joannem Petr. de ferra, in forma libelli, de quo arg. ad pœnam ex compromisso, nam arbiter procedit in specta forma judicii et tanquam judex ordinarius, arbitrator autem prætermisso juris ordine, et prout equum sibi visum fuerit; and into all their submissions which are made by blanks, he unto whom it is compromitted, and into whose hands they are put by reason of the great liberty that is given unto the filling of the same, he cannot be accounted arbiter, and restricted as *judex ordinarius*, but rather *arbitrator et amicabile compositor*, having liberty as he pleases to fill the blank. To this was *answered*, of the practick of Scotland, Judges, arbi-

No 16.  
Found that a minor may be an arbiter.