

No 38.

1583. July. HAMILTON against CAMBUSKEITH.

JOHN HAMILTON having gotten a contract transferred before the Commissary of Glasgow, against the Laird of Cambuskeith, who was minor and pupil, wherein he was obliged to infest the pursuer in certain lands, he charges the minor and his tutor for fulfilling of this contract. They suspended upon this reason, that he was minor, *et non tenebatur placitare super hæreditate*, for if he were decerned to infest the charger conform to the contract *privaretur sua hæreditate*, wherein he was infest. *Answered*, The question was not *in placito contra minorem*, but *in executione rei judicatæ*. THE LORDS found the decret should be put to execution against the minor, and found the letters orderly proceeded.

Fol. Dic. v. I. p. 589. Spottiswood, (MINORS AND PUPILS.) p. 211.

* * * Colvil reports this case :

JOHN HAMILTON, son to Agnes Stuart, and to the umquhile tutor of Cambuskeith, pursued the Laird of Cambuskeith, minor and pupil, and the Laird of Hesilwood, his tutor *pro suo interesse*, for the fulfilling of a contract which was transferred to the said pupil, and that by decree of the Commissaries of Glasgow. The tutor, in name of the pupil, obtained suspension, *alleging*, that he was *minor annis et non tenebatur placitare, &c.* The cause wherefor he was charged was to infest the said John into some lands which the pupil's grandfather, and to whom he was heir by lineal progress, was obliged and bound to do the same; and the said pupil was already infest in the said lands as heir to his grandfather; and so he *alleged*, if he was decerned to infest the said pursuer *privaretur hæreditate in minori ætate*, the which was repugnant directly to the law foresaid. To this was *answered*, That the present question and pursuit was not *in placito contra minorem*, but it was *in executione rei judicatæ contra minorem*, and for the fulfilling of a decree, the which was already transferred *in minorem*. There were practiks *hinc inde* produced. THE LORDS found by interlocutor, that the decree should take execution *contra minorem*, and so repelled the reason of the summons.

Colvil, MS. p. 372.

No 39.
Found in
conformity
with the
Queen's Ad-
vocate against
Wemyss, No
32. p. 2289.

1693. January 7. DRUMQUHASIL against CUNNINGHAM.

THE Laird of Drumquhasil pursued his brother, the Priest of Dumbarton, and Cunningham, heir of umquhile John Cunningham of Clanady, to produce a tack of the teinds of the kirk of ———, set by the Abbot of Kilwinning to the said umquhile John Cunningham; and the assignation alleged made to the said Priest, of the date of ———, together with whatsoever other tack