1634. *January* 17. EARL of MARR *against* His VASSALS.

No 10.

IN the action of reduction, the Earl of Marr against His Vassals; *alleged* for Blackhall, He was minor, 'et non tenebatur placitare super hæreditate.' *Replied*, That ought to be repelled, except he could allege that he was 'in tenemento, ut habetur in Reg. Maj. L. 3. C. 32. N. 3.' THE LORDS sustained the exception notwithstanding, otherwise minors of ward lands could not enjoy the benefit of this maxim. Next *replied*, The exception could not defend his mother, who was liferenter of the lands, and called also; but she behoved to answer for her interest. THE LORDS found the exception relevant for her likewise, because her son would be obliged to warrant her liferent to her.

Fol. Dic. v. 1. *p.* 588. *Spottiswood*, (MINORS AND PUPILS.) *p.* 213.

1665. *January* 31. ALISON KELLO *against* PRINGLE.

No 11.
The defence, *minor non tenetur*, was not sustained, where neither the predecessor was infeft, nor the defender, his heir.

ALISON KELLO pursues a reduction against the Lairds of Wedderburn and Pringle, and craves certification. It was *alleged* for Pringle, no certification, because he was minor, *et non tenetur placitare de hæreditate paterna*. The pursuer *answered*, *Primo*, *non relevat* against the production; but the minor must produce, and may allege that in the debate against the reason; 2*dly*, *Non constat* that it is *hæreditas paterna*, and therefore he must produce at least his father's infeftment; 3*dly*, All he alleges is, that his father had an heritable disposition, without infeftment, which cannot make *hæreditatem paternam*, else an heritable bond were not reducible against a minor, or an apprising and tack; 4*thly*, Albeit the allegeance were proponed, in the discussing of the reason, yet the reason being *super dolo et metu*, upon which the defender's original right was granted, and not upon the point of preference of right, the brocard holds not in that case, as it would not hold in improbation, *in casu falsi*.

THE LORDS found, That the defender ought to produce his father's infeftment, and that a naked disposition would not be sufficient; which being produced, they would sustain the defence, *quoad reliqua*, against the production; but that they would examine witnesses upon any point of fact in the reason to remain *in retentis*, that the witnesses might not die in the mean time, without discussing the reason, but prejudice of their defences.

Fol. Dic. v. 1. *p.* 588. *Stair, v.* 1. *p.* 260.

*** Newbyth reports this case:

IN a pursuit raised at the instance of Alison Kello and her spouse against Isobel Home, relict of umquhile Mr Alexander Kinnier, their son, and heir to the said Mr Alexander, for reduction of a contract and disposition of certain lands