

No 68.

1639. February 19. LD. CRAIGMILLER *against* CHALMERS.

RENUNCIATION of a tack cannot be proved but by writ or oath of party.

*Fol. Dic. v. 2. p. 220. Durie.*\*\*\* This case is No 302. p. 6089, *voce* HUSBAND AND WIFE.

No 69.

Where a reduction had been instituted on minority, and a defence consistent with the reason of reduction was proponed, the pursuer was notwithstanding bound to prove the reason of reduction.

1661. July —. JEAN & MARION MITCHELLS *against* HUTCHISONS.

HUTCHISONS having obtained sentence against Mitchells, as heirs of their father, and their tutors and curators; they intented an action before their age of 21 years, of restitution *in integrum*, and reduction of the service and retour *ex capite minoris ætatis et læsionis*. Against the which, it was *alleged*, That all parties having interest were not called, viz. the pursuers in the decret, Hutchisons, who were a necessary party, having obtained their decret against Mitchells as heirs, and which decret would fall *per consequentiam*, and they not being acted *pro interesse*, before the pursuers' age of 25 years, there is now no *locus* for restitution to their prejudice. To which it was *answered*, That Mitchells being only *principaliter*, to reduce a service and retour, they needed not to call any but the judge, clerk, and inquest, which they did *debito tempore*, and they were content, that Hutchisons should compear for their interest, to propone any thing against the restitution, as if they had been cited. Likewise, their decret was not known to the Mitchells, being recovered against them when they were but 12 years of age, which never came to their knowledge, or if ever it did, they had forgotten it after so long a time.

THE LORDS repelled the allegiance.

In this process there having been an interlocutor of the English Judges, finding that a defence proponed by the Hutchisons, viz. that the pursuers had disponed, or excambed lands pertaining to their father to whom they were heirs, did exoner the pursuers *ab onere probandi minorem ætatem et læsionem*;

THE LORDS found this unjust, and that the pursuers should prove the reason of reduction, because the defences and reasons are consistent, and the defender might lawfully propone the defence, denying the reason.

*Gilmour, No 3. p. 3.*\*\*\* Stair's report of this case is No 77. p. 2216, *voce* CITATION.

No 70.

The oaths of tutors were taken relative

1662. February —. LAIRD OF FAIRNY *against* LORD MELVILLE.

THE Laird of Fairny having disponed to the Lord Melville, the minor, the lands and teinds of Pitlour, with absolute warrandice, the Lord Melville charges