

No 12.

renter's possession, which would not prejudice the minor; for if the liferenter died during the minor's minority, he might return to the possession in the same way as if the liferenter were in possession; but as for the tolerance, now the liferenter having entered by the liferent right, and it being reduced in favour of the pursuer, as the minor could not thereby attain possession, so neither can he give tolerance to defend the liferenter.

THE LORDS repelled also this second defence.

*Stair, v. I. p. 298.*

No 13.

The objection was repelled, that the minor's father's author was not infest, his father himself having died infest.

1667. January 18.

BARBARA CHAPMAN against JOHN WHITE.

BARBARA CHAPMAN pursues a reduction *ex capiti inhibitionis*, viz. That Calander being charged to enter heir to his father, who was the pursuer's debtor, and, upon the charge, inhibition was used against him, after which he disposed to the defender's father. It was *alleged* by the defender, That he is *minor et non tenetur placitare de hereditate paterna*. It was *answered*, That Calander, his father's author, was never infest; *2dly*, That the defender's father did dispose the land to his second son; by both which it could not be called *hereditas paterna*.

THE LORDS sustained the defence, notwithstanding of the reply, and found no process till the defender's majority, and that he was not obliged to dispute whether his father's authors were infest, or whether his father had disposed or not, until his majority, that he might seek out his evidences, and defend himself.

*Fol. Dic. v. I. p. 588. Stair, v. I. p. 427.*

No 14.

A minor not obliged to defend against a reduction of a comprising led by his father, and expired in his time, the reason being that it was satisfied by intromission within the legal; but witnesses may be examined to prove possession, that the depositions may lie *in retentis* till majority.

1671. January 5.

ALISON KELLO against KINNEIR.

ALISON KELLO, as heir to her mother, Margaret Nisbet, having pursued a reduction of an apprising of the lands of Paxtoun, led at the instance of Mr Samuel Hume, against the said Margaret, in *anno* 1622, and assigned to Mr Alexander Kinneir, in *anno* 1623, upon this reason, that the said Mr Alexander was satisfied by his intromission within the legal, this pursuit being against Mr Alexander Kinneir's son, who is minor, and being stopped upon his minority, *quia minor non tenetur placitare de hereditate paterna*;—THE LORDS did, upon the pursuer's petition, grant commission to examine witnesses upon the intromission, to remain *in retentis* till the cause might be determined, in respect the witnesses might die in the meantime; which being reported, the LORDS remitted to an auditor to state the count of the intromission, according to the probation, that the stated account might remain *in retentis*. The defender being heard again before the Lords, did *allege*, That the account could not be stated