viding always that whatsoever was done against them should not be prejudicial to her. So that all the benefit she had in the interim was to brook her possession unquarrelled during her minority. V. Stat. 2do Roberti I. c. 17. Ubi privilegium uni collitigantium ratione minoris ætatis concessum, alteri prodest; nam beneficium collatum uni porrigitur ad consortem. No 6.

Spottiswood, (MINORS and PUPILS.) *p.* 210.

*** Kerse also reports this case:

FOUND quod minor non tenetur placitare super hereditate paterna, albeit his infeftment be craved to fall *in consequentiam*. But the LORDS denied *continentiam causæ*, and found process against the majors to reduce the contract and right called for, and so could not extend the benefit of the privilege *ad majores*.

This same found, albeit the father was not infeft, the son always succeeding as heir to his father's conquest, 23d June 1625, Pringle against Home, *(infra.)*

Kerse, MS. fol. 146.

1625. *June* 23. PRINGLE *against* KER and E. HOME.

No 7.
The plea of *minor non tenetur* was sustained where the heir was infeft, tho' his predecessor was not.

IN a reduction pursued by Pringle, against Sir John Ker and the Earl of Home, for reducing of Sir John Ker's right of some lands of Coldstream, upon a reason libelled against the same; and consequently, for reducing of the Earl of Home's right depending thereupon, and flowing from Sir John Ker *in consequentiam*; the LORDS found the Earl of Home, being minor, ought not to be compelled to dispute upon this reason, seeing the question was *super hæreditate paterna*, whereupon he ought not to be called in question during his minority. And it being *replied* for the pursuer, That the privilege of minority ought not to stay this process, and that the maxim foresaid, viz. Quod minor non tenetur disputare super hæreditate paterna, militates not in this case for two reasons; 1*mo*, Because his right nor his father's were not *primario*, nor principally called to be produced and reduced, but were desired to be reduced in consequence, as depending upon Sir John Ker's right, which was principally quarrelled, and against the which right, his reason was conceived; and that the said axiom had place only where the minor was pursued when his father's right was principally drawn in question, which not being here, the process ought not to be delayed upon his minority; 2*do*, The said maxim had place only where the minor's father was infeft in the lands which were controverted; so that if the father died not seased in the lands, and that the minor was not infeft therein as heir to him, his minority could not excuse him. These answers were repelled, and notwithstanding of the same, the LORDS found that the minor, during his minority, was not holden to dispute, for albeit his right was desired but to fall

No 7.

in consequentiam, yet it would take away from the minor the benefit and commodity of his land, which was alike and as great a prejudice as if his right had been principally quarrelled; and albeit that his father was not seased in the lands when he died, yet seeing the minor was infeft in the lands, and was served heir to his father who had acquired the right from Sir John Ker by virtue of a contract of alienation, and conform whereto he was in possession the time of his decease albeit he was not seased, yet it ought to be repute his heritage, seeing his author, viz. Sir John Ker was seased, whose right was his right, and the minor's self being seased, the not taking sasine by his father, ought not to make the land to cease to be his father's heritage, and to be any reason to debar the excipient from the benefit of the law competent to him through his minority; and so it was found by the LORDS, for it behoved to be repute heritage to the minor, the father being the conquester thereof, and the minor coming in the right of the lands through the preceding right acquired and conquest by the father; for the minor could not be repute to have conquest the same, which if he had done, the privilege of minority would not have excused him to have disputed if he had been quarrelled thereupon, nam minor in conquestu a se ipso facto, si super eo quæstio illi fiat, tenetur disputare, quamvis minor sit.

Act. *Aiton & Nicolson*, younger. Alt. *Hope & Belshes.* Clerk, *Scot.*

Fol. Dic. v. 1. *p.* 588. *Durie, p.* 165.

*** Spottiswood reports this case:

IN a reduction pursued by Alexander Pringle against Sir John Ker of some lands of Coldstream, my Lord Home being called for his interest, *alleged*, The privilege of that tenet, quod minor non tenetur placitare super hæreditate. *Replied*, That his father was never vested nor seased in the said lands, and therefore it could not be reputed as *hæreditas paterna* to him, but rather as conquest, and so he could not allege that benefit; yet the LORDS admitted the allegeance.

Spottiswood, (MINORS and PUPILS.) *p.* 211.

*** This case is mentioned by Kerse in No 6, *supra.*

No 8.
A minor having granted a subaltern right to a major, the privilege was refused to the

1626. *July* 12. STUART *against* E. HOME and Others.

IN an action of reduction at the instance of John Stuart, as being infeft by the King in the barony of Coldinghame, and also at the instance of Douglas of Evlie and Cranston of Moriston, who were also infeft in the said lands and barony by the said John Stuart to be holden of the said John, against the Earl of