No 20. THE LORD ORDINARY, 17th December 1746, "repelled the defence." But, on a reclaiming bill remitted to him, 17th February 1747, "sustained it, and sisted process."

Pleaded in a reclaiming bill, The privilege is founded on chap. 39. stat. Will. which says, 'Nullus infra ætatem existens potest nec debet implacitari 'super placito terræ per breve de recto;' and in Glanvill, *De Legibus Angliæ*, *l.* 13. *c.* 12. it is said, 'Ætas ipsius minoris expectabitur super placito de recto;' and the brieve of right was used in decision of the ground right and property of land, and reduction of infeftments; Skeen, *De Verborum Significatione.*

This is not a competition of titles, but the defender having a wadset, the allegeance is, that it is satisfied, it being plainly improper, as the reverser is bound to pay the annualrent of the money. It is also still redeemable, notwithstanding the reversion is declared to be extinct after Whitsunday 1701; because, after that term, the wadsetter has it expressly in his power to insist for payment; and thus the intent of the action, which is to make the defender denude, being upon her predecessor's obligation, is not a *placitum super hæreditate;* 15th February 1593, Forous against Gourlay, No 23. p. 9082.

The renunciation of the heir being in favour of Nobody, can have no effect, and only shows he did not chuse to represent.

Answered, What was originally a wadset became a right of property, upon the failing to redeem at the limited term. It is true, after that the creditor had right to call for his money; but that was in case he did not make choice of keeping the land; which having taken to, and removed the reverser, it followed, he could not afterwards make a demand; and now that he has taken a renunciation from the heir, the reversion is certainly at an end: However, since the decreet and renunciation, the possession has been as proprietor, *et minor non tenetur placitare.*

The interest of the sum answered to the rents of the lands, and the defender's ancestor besides bought in an adjudication; so that the full value was paid: And this adjudication, whereof the legal was run, is a separate title, and in the defender's person *hæreditas paterna.*

On bill and answers, 24th June 1748, and again on others this day,

THE LORDS adhered.

Act. *Areh. Hamilton & Lockhart.* Alt. *H. Home.* Clerk, *Murray.*

D. Falconer, v. 2. *No* 56. *p.* 54.

1749. *July* 12. DONALDSON *against* DONALDSON.

No 21. THAT the defence of *Minor non tenetur placitare* bars not an objection of nullity to the right itself.

Kilkerran, (MINOR.) *No* 12. *p.* 353.

*** D. Falconer reports this case.

No 21.

1749. *July* 12.—JAMES DONALDSON was infeft, 9th December 1721, in the lands of Bannachrae, on a disposition from James Donaldson of Muiroch, his father; dated 1716; reserving the disponer's liferent, and power to alter, and with the disponee's name apparently wrote in a different hand from the rest of the deed, and still blank in a clause imposing a condition on his heirs-female of marrying a person of the name of Donaldson, adjected after the testing clause.

James Donaldson of Muiroch died 1724, when James younger took possession of the lands disponed to him, and kept it till his death in 1735, when they were entered upon by James his son.

William Donaldson of Muiroch, eldest son of old James, insisted in a reduction of the disposition against his nephew; who *pleaded*, That he was minor, *et non tenebatur placitare super hæreditate paterna.*

Answered, To make *hæreditas paterna*, the ancestor must have been infeft; and the question is concerning the validity of the warrant of the disponee's sasine.

Pleaded for the pursuer, The disposition is null by act 1696, prohibiting blank writs, being apparently blank in the disponee's name, which is filled up with a different hand, and still blank in one clause.

For the defender, It is only a nullity that deeds are delivered blank; and this disposition was filled up before delivery by the sasine taken thereon, which was before the granter was on death-bed; and was also homologated by a deed, 1722, to his third son, reciting it, and burdening the lands with a sum to him, in the event of the disponee's dying childless.

Replied, If the disposition is null, it cannot be made effectual by homologation; beside, the bond is suspicious, being executed after the father had, in a great measure, lost his judgment, as can be proved; and wrote by the notary, who, about the same time, took the sasine, and to conceal the nullity of the warrant, committed a falsehood, by filling up in the recital of the precept the name of the disponee, in that clause where in the disposition it still stands blank.

THE LORDS, 10th February, found, that there was sufficient evidence to presume that the disposition quarrelled was blank in the disponee's name, when it was signed by James Donaldson, the disponer; and, therefore, sustained the reason of reduction on the act of Parliament 1696, anent blank writs, unless the defender should prove that the said disposition was filled up with the disponee's name, at subscribing thereof, or afterwards, in the presence of the witnesses signing to the same; and repelled the defence of homologation founded

No 21. on by the defender; as also the defence, that *minor non tenetur placitare super hæreditate paterna:* And, on bill and answers, adhered.

Reporter, *Lord Elchies.* Act. *W. Grant.* Alt. *R. Craigie & Lockhart.*
Clerk, *Murray.*

D. Falconer, v. 2. *No* 83. *p.* 90.

SECT. II.

The Privilege of *Minor non tenetur* is not a defence against production.—Nor against actions to which the Minor is liable from the nature of his right.—Nor against a proving of the tenor.

No 22.
A minor has no privilege to defend him from producing his writs in an exhibition, which concludes no challenge of his right to his predecessor's estate, being calculated only to force production.

1582. *July.* FLEMING *against* LORD FLEMING.

MRS JEAN FLEMING, daughter lawful to umquhile Lord Fleming, that departed in France, pursued my Lord Fleming to hear and see certain charters, and precepts of sasine, to be retreated and reduced. It was *answered* by the Lord Fleming, That he ought not to produce the evidents, nor enter in plea, because he was *minor annis et quod non tenebatur placitare de hæreditate.* It was *answered, Quod ante omnia est exhibendum*, and that he ought not to be heard to make any allegeance before the exhibition. To this was *answered*, That the words of the law, '*placitare' fuit largissimæ significationis*, and behoved to be extended to all manner of entering into process; and so, if the said Lord was compelled to produce his evidents, he behoved *placitare*, and to enter into process; and to what effect should he produce his evidence, since there could no process be deduced against him.—THE LORDS, notwithstanding of his allegeance, ordained him to produce his evidents.

Fol. Dic. v. 1. *p.* 189. *Colvil, MS. p.* 335.

No 23. 1593. *February* 15. FOROUS *against* GOURLAY and STEVENSON.

IN the action pursued by Forous against Gourlay, the LORDS found, that *minor tenetur placitare super hæreditate*, anent actions of any thing that concerns redemption of lands from minors. *See* No 19. p. 8917.

Fol. Dic. v. 1. *p.* 590. *Haddington, MS. No* 372.