

No 29.

citare super hæreditate paterna, and am not obliged to produce the tailzie; but in due time it shall be made appear, that it was seen and read as it stands, bearing a redeemable clause, before the year 1696, at which time it is pretended this alteration was made. But law secures me not to expose my rights till I be of age to understand and defend them; and so it has been decided, 31st January 1665, Kello *contra* Pringle and Wedderburn, No 11. p. 9063. *Answered*, That brocard suffers many exceptions; for, as it does not defend against the superior's casualties, so neither against the fraud, dole, and falsehood of his predecessor; and here being a plain delinquency, it can never shroud him from production of this deed, seeing the mean of probation may perish ere he come to age.—THE LORDS found the brocard took not place here against the exhibition, and ordained him to produce.

Fol. Dic. v. 1. p. 589. Fountainhall, v. 2. p. 562.

1714. February 10.

THOMAS GORDON of Earlstoun *against* MARGARET GIBSON:

No 30.

IN an exhibition of a wadset right, at the instance of Thomas Gordon of Earlstoun against Margaret Gibson, the LORDS repelled the defence of *minor non tenetur placitare de hæreditate paterna*; an exhibition having no effect, either as to the carrying away, or the least impairing, the minor's heritage.

Forbes, MS. p. 25.

1797. June 29.

CHRISTIAN M'FARLANE *against* SOPHIA HUME, and her Tutors.

No 31.
The heir of an adjudger found not entitled to plead this privilege against the debtor.

DAVID STEWART, a creditor of Daniel M'Farlane of Letter, after his death raised a process of constitution against his daughters, who were minors; and their tutor *ad litem* having given in renunciations for them, Stewart, in 1742, adjudged the lands, entered into possession, and was afterwards, in 1758, infeft upon a charter from the superior.

David Stewart, at his death, disposed the lands to his brother Dr Hume Stewart, who obtained a charter of resignation, on which infeftment followed. By this charter the lands were destined to heirs-male.

Dr Stewart was succeeded by his son, who did not make up titles; but, in his marriage-contract, settled the lands upon the heirs of the marriage. The contract contained neither procuratory nor precept.

The tutors of Sophia Hume, the only child of the marriage, upon the death of her father, executed a general service, and led an adjudication in implement against the heirs-male.