The Lords found there was none in this case.

Lord Elchies said that a tutor acted for his pupil; the curator of a furious person likewise for him; but an interdicted person acted himself, with consent of his interdictors; and in the same manner a minor, with consent of his curators, whom he might want altogether, unless when his father named for him; and when he had them, was only obliged to advise with them. And this seemed to be the opinion of the bench.

1744. *June* 14. CALDER *against* LORD BRACO, &c.

THIS was a question about a wadset, Whether, after requisition and adjudication upon the requisition, it continued proper or became improper? Elchies said, that as all wadsets and annualrent rights were of old considered, not as securities, (because the canon-law forbid usury,) but as sales, therefore the purchaser could not, at the same time, have a right to the land and likewise the price of the land; for which reason, if he required his money, the wadset or annualrent-right evanished, much more if he did diligence by adjudication; for then, as the reverser was bound to pay annualrents and accumulations, it was impossible but the wadsetter or annualrenter behoved to account; and though, by the decisions, (see Dirleton,) he was allowed sometimes to return to the wadset in questions with third parties, yet never in a question with the reverser.

1744. *June* 15. JAMES DOUGLAS *against* ARCHIBALD INGLIS.

[Elch., No. 2, *Minor non tenetur, &c.*; C. Home, No. 268.]

THE Lords found that the maxim, *minor non tenetur placitare*, takes place when the minor is not served, and a creditor in possession of the estate, by virtue of a disposition in security of a sum, which was said to be equal to the value of the whole estate; though Lord Stair requires that the minor should be in possession as well as the predecessor, p. 59. But this Elchies said was not law, and that it was sufficient the predecessor had been infeft, and in possession.

2do, They found that this maxim defends against a redemption, where the clause of reversion is not in the minor's father's rights.

1744. *June* 19. MARGARET LAURIE *against* JAMES LAURIE.

[Elch., No. 25, *Tailyie.*]

THE deceased Walter Laurie bought an estate, and took the disposition to himself and his heirs of tailyie, under "*the restriction* in the disposition of tailyie,

granted by him to his other lands and estates." Margaret Laurie, a remoter heir of entail, brought an action against the immediate heir, James Laurie, to oblige him to make up titles to the said disposition, and to insert in his right all the provisions, restrictions, clauses irritant and resolutive, contained in the tailyie referred to in the disposition.

The Lords found, That, by the word *Restriction*, was meant all the restrictions of the tailyie referred to, or the right so restricted, as in the former settlement; and they seemed to be of opinion, that if the heir made up his titles otherwise than as he was required, there might be room for a declarator of irritancy against him, upon the statute 1685; but they found, that, where there was no bond of tailyie, but only a simple disposition of tailyie, as in this case, the remoter heir of entail had no action against the immediate, to oblige him to make up his titles at all, or to make them up in any other form than he inclines; because every man is at liberty to make use of every right in his person, and if the immediate heir thinks he can get at the estate in any other way, he may try it, still with the risk of encountering the statutory irritancy, by which, as the evasion is punished, so at the same time it is not prohibited.

It was said, on the other side, that the remoter heir of entail was considered by our law as having an interest in the entail, and therefore he has an action against the immediate heir for exhibition and registration of the entail; and if in this case an action is refused, there is a way opened to destroy every entail, for the heir may enter without taking notice of the irritant and resolutive clauses, and then sell the estate; and, by the Act 1685, the purchaser is safe.

Notwithstanding, the Lords found that in this case action did not lie.

1744. *July* 3. AGNES MURRAY *against* CREDITORS of HUGH MURRAY.

[Elch., No. 26, *Tailyie;* Kilk., No. 5, *ibid.;* C. Home, No. 269.]

THE Lords found unanimously that the debts of the institute of an entail were valid to affect the estate, whose sasine had not the provisions and limitations *verbatim* engrossed in it, but only a general reference to the provisions, limitations, clauses irritant, &c. contained in the bond of tailyie, "and which are hereby holden as repeated *brevitatis causa*." The precept whereon this sasine was taken, bore likewise only a general reference to the provisions, &c. above mentioned, but the Lords would not have sustained the debts upon that account only, because the precept was part of the deed of entail, and whatever is engrossed in any part of a deed is held to be in every part of it; but the instrument of sasine is a distinct writing by itself. In this case it was debated, but not decided, whether the debts of the tailyier, or any other debts affecting the estate, which were paid by the heir of entail, could be reared up against the estate, and affected by the creditors of the heir as a separate estate in his person. Two cases were put; one, when the heir making payment had only taken discharges of the debts; the other when he had taken assignations to the debts he paid, either in his own name or in the name of a trustee.

It was argued that the debts are extinguished: 1*mo*, Because an heir of entail, though limited in the representation, like an heir of inventary, is still