1682. *December.*

The BISHOP of DUNKELD *against* The LAIRD of ABERLADY and his Tutors.

No 49.
When the minor is the first provoker, he has no privilege.

THE Laird of Aberlady having got a right to the patronage of a church, which was anciently a patrimonial church of the bishoprick of Dunkeld, and resigned in the King's hand in the year 1595, in favour of Aberlady's authors, and contained in his several rights and infeftments from the King; the now Bishop of the diocese raised reduction of the said right of patronage, as being a dilapidation of the patrimony of his church.

Alleged for the defender, That he is minor; and therefore *non tenetur placitare.*

Answered; Minors are only privileged for answering in reductions of rights of lands and property, King William's statute, cap. 39. Regiam Majest. lib. 3. cap. 32. No 17. And the subject of the present reduction is but a patronage, which is but an inconsiderable right, and not profitable. 2. The defender first provoked to judgment, by raising process for declaring that the pursuer ought to collate the person whom the defender had presented to be minister.

"THE LORDS found, that the defender *tenetur placitare* in this case, in respect he was the first provoker; and that although the title of his declarator was only founded on his last infeftment from the King, he ought to defend the first right proceeding from the Bishop, seeing all posterior rights were but consequential thereof.

Harcarse, (MINORITY.) *No* 703. *p.* 198.

1685. *February* 20. BONNAR *against* LYON.

No 50.
A person having sold lands, the brocard cannot save his heir, a minor, from being liable for warrandice upon eviction.

BONNAR of Kinnettles having bought a parcel of kirk-lands from Lyon of Bridgeton, with absolute warrandice from all perils and inconveniencies whatsoever, and having likewise certain lands disponed to him, in warrandice of these lands; the principal lands being evicted by a designation for a minister's glebe, Bonnar pursues an action of recourse against the warrandice lands. And it being *alleged* for Lyon of Bridgeton, That *minor non tenetur placitare*; 2*do*, Although he were major, yet the lands principally disponed being kirk-lands, which of their own nature are liable to be designed, the clause of warrandice cannot be thereto extended, warrandice being only in relation to the right; and this being inherent to the nature of the lands, and not any defect of the right, he could have no recourse: THE LORDS found, that the clause of warrandice, being an absolute warrandice, against all perils and inconveniencies whatsoever as law will, and that this eviction not having proceeded from any supervenient law, but according to the law standing the time of the disposition, they repelled the defence of *minor*

No 50. *non tenebatur placitare*, and also the other defence foresaid, and they sustained the action of recourse against the warrandice lands.

Fol. Dic. v. 1. *p.* 589. *P. Falconer, No* 51. *p.* 28.

*** Harcarse reports this case:

ONE having disponed kirk-lands with absolute warrandice against all evictions, perils, dangers and inconveniencies, and there being three acres thereof afterwards designed for a glebe, the buyer raised a declarator of eviction against the disponer's heir, who was minor.

Alleged for the defender; That *minor non tenetur placitare*, this process having the effect of a reduction.

"THE LORDS repelled the defence."

Harcarse, (MINORITY.) *No* 704. *p.* 198.

No 51. 1685. *February* 4. GORDON of Fechil *against* FARQUHAR of Moonie.

In a reduction upon the act of Parliament 1621, against a minor, of a right granted to his father;

It was *alleged* for the defender; That *minor non tenetur placitare.*

Answered; It was *dolus paternus et fraus* to take a disposition without an onerous cause, *post contractum debitum.*

"THE LORDS sustained the minor's defence, and refused to make him find caution, which they thought to be difficult for a minor who had his lands questioned; but allowed the pursuer to lead a probation by witnesses to lie *in retentis*, which he might use in the discussing of the reduction."

Harcarse, (MINORITY.) *No* 716. *p.* 202.

No 52. The brocard is not effectual in any process for making good the right of a purchaser of lands.

1710. *June* 27. SIMON M'KENZIE *against* DONALD M'KENZIE.

MR SIMON M'KENZIE of Allangrange standing infeft in these lands with the pertinents, pursues Donald M'Kenzie of Kilcowie in a molestation, and declator that the defender ought not to disturb and molest him in the peaceable possession of the bog of Drummore, which is not only an uncontroverted part and pertinent of the barony of Allangrange, but was so found by an indenture and decreet-arbitral in 1677, and craving it may be found to pertain and belong to him in property. *Alleged* for Kilcowie, the defender, That in so far as he libelled a molestation, *non facit vim*, he was willing to answer; but having accumulated in this process likewise a declarator of property, he was minor, and so had the benefit and privilege of the maxim, *quod non tenetur placitare super*