tare super hæreditate paterna;—the LORDS, notwithstanding, did ordain them to produce, reserving the said defence, and all others, after production.

Fol. Dic. v. 1. *p.* 589. *Gosford, MS. No* 222.

No 27.
produce in an improbation, reserving his defence, that *non tenetur placitare.*

*** A similar decision was pronounced, 27th November 1678, Guthrie against Lord Guthrie, No 16. p. 9069.

1678. *February* 15. GORDON *against* MAXWELL.

No 28.

THIS privilege not competent to exclude a wife's revocation of a donation granted to her husband, and falling by his death to his heir a minor.

Fol. Dic. v. 1. *p.* 590. *Stair. Fountainhall.*

*** This case is No. 353. p. 6144. *voce* HUSBAND and WIFE.

1710. *February* 1. CRAWFURD *against* CRAWFURD.

No 29.
A minor was found obliged to *exhibite* his writs, which it was alleged his predecessor had fraudulently altered, so as to exclude the pursuer.

THE deceased James Crawfurd of Ardmillan, in 1682, makes a disposition and tailzie of his estate in favours of James, his grandchild by his eldest son, whereupon a charter is obtained from the Bishop of Galloway superior, and the tailzie is completed by infeftment; but the disposition never being registrated, and means used with the old man to alienate his mind from his grandchild, by James Crawfurd his second son, (as is alleged;) it was represented, that he had forgot to make it redeemable, or to reserve a power and faculty to alter; but the tailzie being all written with the said James the second son's hand, he proposed to his father to cut off the first two sheets, and write them over again, and insert a clause of redemption on payment of three pounds Scots, and then keeping the third sheet (which was the tail, containing the parties and witnesses subscriptions) entire, he would batter the two new transcribed sheets thereto; which motion was yielded to, and the old father subscribes the margins, and presently uses an order of redemption, and consigns the three pounds Scots, whereby the estate fell to James the second son, the next substitute in the tailzie. But providence baffling human prudence, ordered it so, that the two old sheets were not destroyed, but found entire after old Ardmillan's death lying beside him. There is now a reduction, improbation, and declarator raised at the grandchild's instance against his uncle James (who is now dead) his son, for proving the foresaid fraudulent contrivance and alteration to seclude his nephew, and get the estate to himself; and produced the two first sheets, which exactly quadrate with the rest of the tailzie, and bore no reversion nor power to alter. *Alleged*, I am both minor and a pupil, and so *non teneor pla-*

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, disponed 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.