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same time it is very possible that the right of reversion may have been discharged or extinguished many different ways, which the minor cannot account for. The law presumes him ignorant of past transactions, and unable to recover the documents by which they are to be instructed, and therefore protects him from suffering during his non-age.

THE LORDS sustained the defence against the reduction, That *minor non tenetur placitare*; and found, that it is no sufficient defence against declarator of non-entry; and remitted to the Lord Ordinary to enquire into the pursuer's title to the superiority of the lands, and whether all persons having interest were properly sisted.

Fol. Dic. v. 4. p. 9. C. Home, No 269. p. 433.

1749. February 14.

STRANG against CRAIG.

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The privilege of *minor non tenetur placitare* found to take place, when the right was *ex facie* irredeemable, although it might turn out to be otherwise.

STRANG disposed the twenty shilling land of Corsehill to Craig in 1692; the disposition bore to be in security; but it bore also a clause, that, if the money was not paid before Whitsunday 1701, the reversion should expire, and the lands belong irredeemably to the disponee.

The heir of Strang now pursues the heir of Craig for a count and reckoning, and extinction of the wadset; for whom it was *alleged*, That, although the right may originally have borne an improper wadset, yet, as the term of reversion was suffered to expire, and that it was now 40 years since the term was expired, his right was become absolute, as was found in the case of Pollock and Story in 1738, No 51. p. 7216. *voce* IRRITANCY, at least that he being *minor non tenetur placitare*.

THE LORDS sustained the defence upon the brocard, *minor non tenetur placitare*, notwithstanding its being *replied* for the pursuer, That he was also minor, and that, deducting the years of his minority, 40 years were not run since the expiry of the term of reversion; for they considered it to be enough to found the brocard, that the right was *ex facie* become irredeemable.

Fol. Dic. v. 4. p. 10. Kilkerran, (MINOR.) No 9. p. 350.

*** Lord Kames reports this case.

1748. June 24.—JAMES STRANG of Corsehill, being *ab ante* debtor to William Craig in L. 1000 Scots, and having instantly borrowed from him 2500 merks more, did, upon the 27th of May 1692, for the said William Craig's further security, dispone to him heritably, under reversion, the twenty shilling land of Corsehill, with procuratory and precept, redeemable as follows: ' By payment of the foresaid two sums, amounting to 4000 merks, with the annual rent thereof, from the term of Whitsunday then last, and in time com-

ing, upon the term of Whitsunday-even 1698; and failing thereof, upon the term of Whitsunday-even 1701, which is the last term allowed for redeeming the lands; so that, if the disponent shall fail in payment of the said sum and annualrents, in manner foresaid, the foresaid condition of reversion, and all right of redemption, are declared to be extinct, as if they never had been, without any declarator to be purchased thereon. But, in case a declarator is needful, he consents that the same be pursued before the Sheriff of Lanark, or the Commissary of Glasgow, or of Hamilton.' There is likewise a clause, 'That in case the disponent, during the course of the said reversion, suffer two years annualrent of the principal sum to run into the third unpaid, the right of redemption shall from thenceforth be null, void, and extinct.' Then follows a clause in favour of the creditor: 'That, in case he shall rather desire payment of the foresaid accumulate sum, with the annualrents, than to retain the security above written, the disponent shall be bound to make payment to him, and his foresaids, of the said 4000 merks, with the bygone annualrents, upon the said term of Whitsunday 1701, or any other term or time thereafter; and, in the mean time, during the course of the said reversion, to make payment of the ordinary annualrent of the said principal sum of 4000 merks, at two terms in the year, Whitsunday and Martinmas, by equal portions; and so to continue in the good and thankful payment, until the said reversion be fulfilled in manner above written, or declarator obtained upon expiration thereof.'

This disposition was obviously intended to be only a security during the subsistence of the reversion; leaving the debtor in possession of the land. Accordingly, in terms of the covenant, he entered into payment of the interest; and there was produced a discharge granted to him by William Craig, the creditor, bearing date the 4th of July 1693, acknowledging the receipt of 240 merks, being a year's interest of the sum borrowed; and it is there specified, 'That the said 240 merks was precisely the rent of these parts of the land of Corsehill, possessed by James Strang, and wadset by him to William Craig.' This document is evidence that, at this period, the rent of the land of Corsehill did precisely answer the interest of the money, being then at 6 per cent.

Before the date of the wadset-right, Thomas Maxwell of Millhouse had obtained a decree of adjudication, adjudging from the said James Strang his twenty shilling land of Corsehill, for the accumulated sum of L. 408:6:8 Scots. As this adjudication was clearly preferable to the wadset-right, William Craig was forced to purchase the same; which he did for the sum of 500 merks, and took a conveyance, the 18th July 1698, when the term of redemption was still current.

James Strang made no payment, excepting the year's interest above mentioned; which obliged James Craig, as representing his father William, to bring a process of removing against James Strang before the Sheriff of Lanark, followed by a decree of removing, 21st of March 1705, whereupon James

No 20. Craig got into possession. His father William, in the 1695, had obtained a charter of confirmation from the superior, upon which he was infeft, and James was also infeft upon a precept of *clare*. Further, in the year 1707, he took from James Strang, eldest son and heir apparent of the said James Strang of Corsehill, a renunciation of all right he had, or could pretend to his father's estate.

In the year 1744, James Strang in Crofthead-shiells, grandson and heir to the said James Strang of Corsehill, brought a process against Katharine Craig, daughter and heir to the said James Craig, concluding an extinction of the wadset-right, by the intromission of the defender and her predecessors with the rents of the land of Corsehill. The defence was, that she was minor, *et non tenetur placitare super hæreditate paterna*.

The parties did not differ about the principles that ought to govern this case, but about their application. The pursuer admitted that the defence was good, supposing the defender's father to have died proprietor of the subject. But he insisted that her father's title was no better than a right in security, and that the right of redemption is still competent.

The defender yielded, that the right was originally a security; but insisted, that it was converted into a right of property by force of the paction, 'That, in case the money was not paid before Whitsunday 1701, the right of redemption should be extinct.' Possibly there may be a foundation in equity for a redemption of the land, notwithstanding the expiry of the conventional reversion. But this has no influence in the present question; it is sufficient for the defender to specify that her father died vassal in these lands. If so, she is not bound, during her minority, to enter into a question about her father's property. She would not be bound to enter into a question with a third party offering to show a preferable right; far less is she bound when her father died proprietor, to sustain a reduction of his right upon any ground in law whatever.

The only difficulty arose from a clause above mentioned, *viz.* 'That in case William Craig, the creditor, chose rather to have his money than retain the security, he should be entitled to demand payment at any time before Whitsunday 1691, or at any time thereafter, without premonition.' Whence the pursuer drew an argument, that the defender is at this day entitled to demand the wadset-sum; and that she cannot, at the same time, be both proprietor of the land and creditor for the price. It was *answered*, That no more was intended by the clause but to give an option to the creditor, either to take the land or his money. But, after making option of the land, which he did, by apprehending the possession, &c. it was not intended by this clause that he should be empowered to abandon the land, and to demand the wadset-sum; at that rate, if the land were destroyed by an earthquake, or overblown with sand, the claim for the money would be entire. The case is here the same as in an adjudication; even after the legal is expired, the claim as creditor re-

mains. But if the adjudger take himself to the land, by dispossessing the debtor, the debt is extinguished, and the land is his in place of the money.

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In support of the defence a separate ground was *urged*, That the adjudication made the estate *hereditas paterna*, seeing the legal is expired, and the heir apparent had renounced any benefit by the reversion. And it has been often decided, that an apparent heir's renunciation of the legal reversion of an apprising led against his predecessor, renders the apprising an irredeemable right of property, to exclude all after-heirs from challenging the same.

“ THE LORDS sustained the defence.”

Rem. Dec. v. 2. No 85. p. 139.

* * * This case is also reported by D. Falconer.

1749. February 14.—JAMES STRANG of Corshill disposed, 27th May 1692, to William Craig, for 4000 merks, the said lands; redeemable for payment of that sum, with annualrent at Whitsunday 1695; and failing that, at Whitsunday 1698; and failing that, at Whitsunday 1701, “ which was the last term allowed for redeeming the lands :” So that if the disponent failed in payment, the condition of reversion, and all right of redemption, was declared to be extinct, without any declarator; but in case it was needful, it was consented it should be pursued before the Sheriff or Commissary; and in case the disponent should rather desire to have his money than to retain the security, the disponent was bound to pay with annualrent at Whitsunday 1701, or any time thereafter; and, in the mean time, to pay the annualrent, “ till the reversion were fulfilled, or declarator obtained upon expiration thereof.”

It did not appear when the wadsetter obtained possession, the pursuer, heir of the reverser, alleging he did it soon after his right; but the defender *alleged*, That it was only in 1705, after expiry of the reversion; at which time James Craig, William's son, took a decret of removing against the reverser; but the pursuer alleged he possessed only part of the lands as tenant, from which the removing was; and inferred it from a decret of mails and duties in 1693, at the instance of an adjudger, wherein the extent of the rent of his possession was libelled; and the other tenants called produced discharges from the wadsetter. This adjudication for 500 merks was, after 1698, purchased in by the wadsetter.

James Strang, son to the disponent, 27th December 1707, renounced all right to any heritable estate belonging to his deceased father, without expressing in whose favour.

James, son to the renouncer, pursued a declarator of extinction of the wadset by intromission, against Katharine Craig, the wadsetter's heir; who *pleaded*, That her predecessor possessed as absolute proprietor, and she, who was minor, was not obliged to hold plea *super hereditate paterna*.

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THE LORD CHIEF JUSTICE, 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 allegiance 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 hereditate*; 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 decret 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 *hereditas paterna*.

On bill and answers, 24th June 1748, and again on others this day,
THE LORDS adhered.

Act. *Arch. 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.