

*annis et quod non tenebatur placitare super hæreditate.* It was answered by the Abbot, That he was convened *super facto paterno*; and also, that he could allege no privilege of minors against the said Abbot; being a kirk man, who was alike privileged as he was, *et privilegiatus adversus privilegiatum non gaudet privilegio.* The which allegiance was admitted by the LORDS, and the defender ordained to answer, notwithstanding his minority.

*Fol. Dic. v. i. p. 591. Colvil, MS. p. 296.*

No 55.

1582. July.

FLEMING against LORD FLEMING.

MRS JEAN FLEMING, as only lawful daughter and nearest heir to umquhile Lord Fleming, who died in France, as Ambassador at the Queen's marriage, pursued my Lord Fleming, her father's brother's son, to hear and see certain infestments and retours to be reduced, as given by him who had no power to give the same. It was first of all answered by the said Lord, That he ought not to enter in plea, *quia fuit minor annis et sasitus in tenemento.* To which was answered, That the gentlewoman was alike privileged, *nam fuit causa dotis, et fuit puella adhuc indotata, et 'dotium causa,' ut ait l. i. D. Solutio matrimonio 'semper et ubique præcipua est, nam rei publice interest, dotes mulieribus conservari;* and so the law made 'Generaliter' could have no place against the pursuer; and also of necessity, *et ex necessitate legis,* the pursuer ought to have process into the reduction of the retour, otherwise she would be debarred *in perpetuum ab agendo,* by reason of the act of Parliament, that if the reductions of retours be not pursued within the space of three years after giving furth of the same, they will not be heard thereafter to pursue, and the action will prescribe. To this was answered, That the law 'Generaliter,' made in favours of the minors, had but these exceptions from it, which were *de debitis paternis propriis aut de nova dissasina;* and, except the pursuer would allege her action to be comprehended under one of these, she could have no action to pursue the said Lord to be decerned to enter into plea; and as to the law of the prescription of retours, that is to be understood of the retours by incident process, as was not in this case. There were practicks alleged *pro et contra* upon both sides.—THE LORDS found by interlocutor, that the said Lord should answer, notwithstanding of his less age. "Multo immovebat Dominos consideratio personæ quæ fuit puella provecta ætate, et regia, et propinquior hæres lineæ directæ domus et familias de Fleming. Agebatur etiam alimentaria causa. Nonnulli tamen Dominorum in contraria feurunt opinione."

*Colvil, MS. p. 338.*

No 56.

A minor was found obliged to answer to suit of a Lady *causa dotis.*