

No 109.

said Helen the sum of 500 merks which is equivalent to the price of the land, and for proving thereof produce an acquittance subscribed by her and her curators of the said sum delivered to her for the said disposition, that she might travel into England. To which it is *replied*, the reason is relevant notwithstanding of the exception, because a minor *sine causa cognita et decreto judicis* may not sell lands, and far less take money therefor, and spend it yearly to her own prejudice; and although she, by the said acquittance, grants the receipt of a greater sum than she received indeed, yet the granting of the acquittance prejudices not the heir to reduce the disposition made, and to seek restitution. THE LORDS repelled the exception notwithstanding of the acquittance produced.

Auchinleck, MS. p. 134.

See similar decision, 19th July 1672, Ruthven against Gray, No 9. p. 31.

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1632. July 4.

DAVIDSON *against* HAMILTON.

A husband provided his wife in life-rent of his whole means and conquest, and bound himself to pay 5000 merks to her father. He brought a reduction on minority, and lesion because he had got only 1000 merks of tocher. The contract reduced as to the obligation to the father-in-law, but not as to the wife's provision, altho' there might have been an eventual prejudice to the children.

IN a reduction of a contract of marriage, at the instance of Alexander Davidson, made betwixt him and Robert Hamilton, and the said Robert's daughter, wife to the said Alexander, whereby the said Alexander was obliged to infeft his said future spouse in all his lands and estate, and in all which he should thereafter conquest *stante matrimonio*, during her lifetime, which the said Alexander desired to be restricted to a competent provision, seeing there was only conditioned to him in tocher by the contract 1000 merks, and seeing the bairns, if the wife survived him, would be destitute of all means to live by; and also by the contract he was obliged to pay to his said father-in-law 5000 merks, and to do sundry other particulars to him, if there were no bairns of the marriage, which should live while they were married, which contract he desired to be reduced, because he was then minor and greatly hurt. THE LORDS sustained the reason of minority and lesion, for reducing of the contract, in so far as the pursuer was thereby obliged to his father-in-law, as said is; but the LORDS found not the reason relevant to reduce the contract, so far as concerns the provision therein, introduced in favours of the minor's wife, for her life-rent of the pursuers whole estate; for the LORDS found, that any either major or minor, might provide his future spouse to his whole means, and that such provisions are valid by the laws of this realm; howsoever by the Roman law there was required an equal proportion *inter dotem et donationem propter nuptias*, neither was the minor esteemed to be prejudged by such provisions, in such sort that he should be restored against the same, especially where there was no creditor to the pursuer insisting in this reduction, nor complaining of this provision, *quo casu* if the wife had been provided to her life-rent, and the bairns

to the fee of the whole, and inhibition served thereon in their favours, the reduction then might have been more considerable, whereas it is not so now, none being pursuer but the husband alone. And where it was *alleged*, That by this provision the bairns of the marriage, if the wife survived the pursuer, would want all provision and means of life and maintenance, that was not to be respected, seeing it was an uncertainty, which had a possibility to be so or otherwise, for it might be that the wife should die before him, and that the bairns might die before the wife should come to have the use of her liferent; and if they should not die, but lived after their father, the mother bruiking the liferent, yet in law the wife would be compelled to grant them a reasonable modification for their education and sustentation, which is agreeable with all law, both divine, natural and human.

Fol. Dic. v. 1. p. 580. Durie, p. 639.

. Auchinleck reports this case.

ROBERT HAMILTON of Polie contracts his daughter in marriage with Alexander Davidson in Perth, being a minor without consent of his curators, which contract the said Alexander craved by way of action to be reduced and to have it declared null, because by the same the said Alexander is obliged to infest his said spouse in all lands and annualrents wherein he was infest himself during her lifetime, and likewise to provide her to her liferent of all lands and annualrents, that he should happen to conquest *stante matrimonio*, and in case there be no heirs procreated betwixt them, the said Alexander is obliged to pay to the said Robert the sum of 5000 merks, and to infest him in a tenement in Perth, for which Robert Hamilton is only obliged to give 1000 merks in tocher with his daughter; which condition being made by a minor to his hurt, without consent of his curators, ought to be reduced, and the LORDS ought to modify the conjunct fee, conform and proportionable to the tocher. THE LORDS reduced the said contract, in so far as it concerned the condition made to Robert Hamilton, but assolzied from the reasons conceived against the provision of the pursuers spouse, because by our law there is no such custom to reduce contracts of marriage, for want of due proportion betwixt the tocher and conjunct fee.

Auchinleck, MS. p. 126.

. See M'Gill against Ruthven, No 77. p. 5696. *voce* HOMOLOGATION.

1035. March 3.

HUME against RIDDEL.

ONE Hume of Ogstoun having comprised the lands of Ogstoun to himself and his wife in liferent, and to John Hume, their son, in fee, and thereupon

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A minor is presumed to be lesed,