way of instrument, and pursues him to denude himself. It was *alleged*, That the bond was only personal, in favours of the late Earl, and not of his heirs, and is *stricti juris*; and that this Earl was not heir the time of the offer, nor did he consign the money. It was *answered*, That the right to the bond is transmissible to the heir, seeing he says not, that if the Earl being on life, should pay, &c.; and so he is obliged to denude himself, in favours of the Earl's heirs or assignees: That this Earl, the time of the offer, was apparent heir, and within fifteen days thereafter retoured: And the offer was sufficient, seeing the bond provided not the consignation of the money, being as sure in the Earl's hands as any others. No 7.

THE LORDS repelled the allegeance.

Gilmour, No 13. *p.* 12.

1669. *July* 14.

ARTHUR FORBES and PATRICK LEITH *against* EARL MARSHALL.

No 8.
If an heiress dispone her right to her husband or any for his behoof during minority, there being no contract of marriage or renunciation, her heir may reduce upon minority and lesion.

THE lands of Troup being disponed to a second brother of the house to be held of the Earls of Marshall, Gilbert Keith having but one daughter, did tailzie the lands to the Earl, failing of heirs-male of his own body; but did burden the same with the sum of 10,000 merks payable to his daughter, for which he gave her a wadset. The daughter being but 14 years of age, was taken away and married by one John Forbes, without any contract of marriage, and died within a year thereafter; but before her death, with consent of her husband, did dispone the said wadset in favours of William Forbes her husband's brother, without making mention of any contract of marriage, or any conjunct fee made by the husband; only he alleged, that he had a back-bond from his brother, but could not produce the same; whereupon there being mutual reductions intented, one at the instance of Arthur Forbes as assignee, made by John Leith against the Earl of Marshall and the Laird of Lesmore, to whom he had disponed the lands of Troup, and another against Leith and Forbes, at the instance of the Earl of Marshall as assignee, made by the heir to Troup's daughter, for reducing the right made by her to her husband, upon minority and lesion;

THE LORDS did reduce the right made by the daughter, not only because there was no back-bond produced to verify that it was in effect made in favour of her own husband; but most were of opinion, that albeit it had been made directly to her husband, yet it being without any remuneration, or by way of contract, it was null, and to be reduced *ex capite minorennitatis et læsionis*; specially she having been carried away without consent, as said is.

In this process it was likewise found, that a reduction being intented at the instance of the heir, as having interest to pursue a reduction of the disposition, as done to his enorm hurt and lesion, albeit it was blank, and the reasons not filled

No 8. up till after the heir's majority, and *post annos utiles*, yet being truely executed, the action did not prescribe.

Fol. Dic. v. 2. p. 72. Gosford, MS. No 171. p. 68.

*** Stair reports this case:

ISOBEL KEITH having a right to a wadset of the mains and miln of Troup, and being married to John Forbes, she disponed the heritable right to his brother, which right is now, by progress, in the person of Leith of Whitehaugh. Isobel's brother raised a reduction *in anno* 1628 of the right granted by her to her husband's brother; and now his right and an assignation to the said process coming to the Earl of Marshall, and by him to Lesmore, they insist in their reduction upon the reason of minority and lesion. It was *alleged* for the defender, 1*st*, No process; because prescription is past, since the right was granted by Isobel Keith, which cannot be interrupted by the reduction *in anno* 1628; because it is evident by inspection of the reduction, that it is but filled up of late, and that the executions thereof are new, so that it signifies no more than blank paper or a blank summons, till the reasons be filled up and insisted in, before which prescription was compleat: 2*dly*, Absolvitor; because the right granted by Isobel Keith to her husband's brother was to the husband's behoof: Likeas there was a back-bond granted by the brother to the husband so declaring, and there being no other contract of marriage, this disposition must be understood as granted to the husband in contemplation of the marriage, and being but the right of 10,000 merks, which was but a competent tocher, it was no lesion to dispone the same to the husband, or any to his behoof; and offered to prove by the brother's oath, that there was such a back-bond, and that yet there is a back-bond by him to whom the brother disponed. The pursuer *answered* to the first, That interruption is sufficient by any act whereby the party having right may follow the same, so that summons (albeit not legally executed) would yet make an interruption, though no sentence could follow thereupon; and a summons being blank, must be presumed as comprehending all the grounds and reasons that might have been filled up therein; but here the libelling of the interest, which is not with new ink, bears expressly, that the pursuer as heir to his sister, has good interest to revoke and reduce deeds done by her to her prejudice, which doth imply the reason of minority and lesion. To the second, Albeit the disposition by the wife had been to the husband, yet it is simply reducible upon minority, there being no remuneratory obligation upon the part of the husband, providing her to a jointure, in which case if the provision had been suitable, there would have been no lesion, and if not suitable, the Lords might reduce it in part, or rectify it if done in the wife's life; but here she having nothing from the husband, and being dead, she cannot now receive a jointure, and so the right is reducible *in toto*; especially seeing the said John Forbes did violently carry away the said Isobel Keith, and married

No 8.

her without her friends' consent, and must be presumed by the same means to have purchased the same disposition from her, without any remuneratory provision to her: 2*dly*, There is not, nor cannot be known any such back-bond; and it were absurd that the husband's brother's oath alone should prove the same in favours of his brother. The defender *answered*, That albeit there was no jointure provided, yet the law provides a terce, which oft-times is better than the jointure. The pursuer likewise *answered*, That the law did provide the *jus mariti* and the courtesy, so that either party ought either to acquiesce in the provision of law, or the provision of parties must be mutual.

THE LORDS repelled the first defence, especially in respect of the manner of libelling the title; and found not the executions of the first summons to appear new, and therefore sustained them, unless the defender would improve the same. They found also that allegeance, that the disposition was to the husband's behoof, was not to be sustained; especially seeing no back-bonds were produced, or offered to be proven, and that the manner of probation offered was no way sufficient, that there was no provision for the wife. See PRESCRIPTION.

Stair, v. 1. *p.* 638.

*** A similar decision was pronounced, Vernock against Hamilton, No 75. p. 2214. *voce* CITATION.

1697. *June* 2. A MINISTER'S EXECUTORS *against* PARISHIONERS.

No 9.
Found, that act 1669, requiring consignation in case of suspending minister's stipends, confers *privilegium personale* on the minister himself only.

A QUESTION was moved to the Lords, on the occasion of a bill of suspension, presented by some parishioners against a minister's executors, charging for some bygone stipends resting to him during his incumbency, and for which he had served; whether the act of Parliament, requiring consignation in case of suspending ministers' stipends, took place in this case? THE LORDS found it was *privilegium personale*, competent only to the minister himself, that he might not be drawn away and diverted from attending his charge of souls; and therefore, where collectors of vacant stipends charged, they could not crave consignation. Some of the Lords looked upon it as equally favourable to a minister's relict and nearest of kin, and that the privilege seems to follow the stipend, as *really* annexed thereto: Yet in regard the practice, since the date of that act of Parliament 1669, appointing consignation to ministers had been otherwise, the Lords would not extend it.

Fol. Dic. v. 2. *p.* 72. *Fountainhall, v.* 1. *p.* 773.