

inter dotem et donationem propter nuptias; and whatever majors, who are *rei sue arbitri*, may yield in their contracts, that is no rule to minors, but their standards must be what majors, well advised, and acting on rational grounds and considerations, would do in such a case.—THE LORDS found the Lady Maulsley lesed by her first contract of marriage; but reserved to themselves to consider, if this should import a total restitution against the articles of it, or only a rectification, to bring up the terms to an equality and equilibrium.

Fountainhall, v. 1. p. 827.

No 119.

1705. July 14.

PATRICK M'DOUGALL, Merchant in Edinburgh, *against* MR JOHN MARSHALL.

MR JOHN having taken off mournings from the said Patrick for the funerals of his father, to the value of L. 96 Scots, he raises reduction thereof, on this head, That he was minor, and had *debito tempore* revoked, and was clearly lesed, they not being for himself, but for his brother and sister, whom he was not bound to furnish, he now discovering his father's estate to be overburdened with debts.—*Answered*, He sent for the merchant, and was the sole off-taker and engager for their payment; Mr. M'Dougall knew not for whom they were, nor bargained he with any but him; he saw him by the habit of his body to be of a man's growth, and if he was minor, he could not want much of twenty-one; neither did he signify to him his minority, and so *dolose* by his silence induced him to trust him, *et non debet ex sua fraude lucrari*. Likeas, he was a master of arts, and took off cloaths to his brother and sister, (which the merchant was not concerned to know) it was *debitum naturale et officium pietatis* in him, and he can retain it out of their patrimonies at counting.—THE LORDS repelled the reason of minority in this case, and found him liable; though the furnishings were not to himself, but to his brother and sisters, reserving his action for repayment against them as accords.

Fol. Dic. v. 1. p. 580. Fountainhall, v. 2. p. 284.

* * * Forbes's report of this case is No 59. p. 421. *voce* ALIMENT.

No 120.

A minor, who was a master of arts, and in appearance adult, found liable for furnishings bespoke by himself, although not for himself, but for his brother and sisters, whom he was not bound to aliment in consequence of any succession acquired by their father, whose estate had been overburdened with debt.

1708. July 28.

BYRES *against* REID.

No 121.

IN a reduction at the instance of a wife upon minority and lesion, in a competition with the husband's creditors, libelling upon her disposing in her contract of marriage, at the age of seventeen, all her heritage, and the husband binding for a suitable jointure; yet that soon after the marriage, it appeared that he was worth nothing, having first retired to the Abbey, and then to Flanders to be a soldier; and his creditors having seized on his whole estate, she

No 121. and her children were left miserable; and the creditors *alleging*, That she could not say she was lesed, being provided to a competent jointure;—to which it was *answered*, That she was enormly lesed, by denuding of her estate, to be carried off by his creditors; and her jointure was but a name, nothing being left, either for her liferent or childrens' provision.—THE LORDS repelled that defence, and found the minority and lesion proved, and reduced the contract, in so far as concerned the disposition she had given of her own estate; only this did not take from the husband and his creditors the *jus mariti* to the rents of the lands during the standing of the marriage, and until the husband's death.

Fol. Dic. v. 1. p. 581. Forbes. Fountainball.

* * This case is No 249. p. 6045. *voce* HUSBAND and WIFE.

1710. July 14. CHALMERS *against* LYON'S CREDITORS.

No 122.

AN heiress married at the age of sixteen, without consent of her mother; and nine months thereafter a contract was made, whereby she disposed her heritage *nomine dotis*, and the husband bound himself to have in readiness a suitable sum of money, and to take it to her in liferent, and to the children in fee, without any provision to her of the liferent of her own lands, but giving her the liferent of half the conquest. The husband became *oberatus*, and gave to his creditors infestment out of the lands, and died leaving children. In a reduction of this contract at her instance, upon minority and lesion, the LORDS sustained the reason arising from the above facts, and therefore admitted her to liferent the lands she brought along with her. But whether the fee of the lands would belong to her children, or to her husband's creditors after her death, was not decided.

November 12. 1714.—Thereafter the husband's creditors having adjudged the lands after his decease, as in his *hereditas jacens*; the LORDS, in a competition betwixt them and the relict, sustained her reason of reduction of the fee, as they had done of the liferent, upon minority and lesion, unless the creditors would undertake to make out that the husband had a stock at the time of the contract for securing the wife in a liferent, though afterwards his means failed.

Fol. Dic. v. 1. p. 581. Fountainball. Forbes. Dalrymple. Bruce.

* * This case is No 265. p. 6056. & No 266. p. 6059. *voce* HUSBAND and WIFE.

No 123.

1729. January 29. MONCRIEF *against* CREDITORS of MITCHELL of Balbardie.

SOME years annualrent being resting to a minor upon an heritable bond, he not obtaining ready payment from the debtor, granted him a discharge thereof,