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stance of the person infest upon the said disposition, against the said woman and her husband ; whereof a reduction and suspension being raised, upon that reason, that the suspender was clothed with a husband the time of the expiring of the said reversion, and of the said decreets, so that *non valebat agere*, nor to use the order of redemption ; and the husband's negligence in suffering the reversion to elapse, and the said decreets to be obtained, ought not to prejudice her ; seeing she was content yet to purge by payment of the sum contained in the reversion ;

THE LORDS, upon debate amongst themselves, had these points in consideration, viz. *1mo*, Whether or not a redemption, being limited and temporary, (as said is) in the case foresaid, there may be yet place, after the elapsing of the term, to purge ; and some of the LORDS were of the opinion, that reversions, being *stricti juris*, there can be no redemption, neither in the case of legal nor conventional reversions, after elapsing of the term ; nor place to purge ; but this point was not decided. *2do*, It was agitated, whether a woman, clad with a husband, may be heard to purge, upon pretence that *non valebat agere* ; as to which point, some of the LORDS did demur, and it was not decided ; the letters being found orderly proceeded upon another ground, viz. in respect of the decret *in foro contradictorio*. But it is thought, that such reversions should expire even against women clothed with husbands ; seeing it cannot be said that they are in the case of minors, and *non valentes agere*, because they are clothed with a husband ; and by the contrary, having the assistance and advice of their husbands, they are more able to go about their affairs ; and if their husbands refuse to concur, they may apply to the Lords, and desire to be authorised by them.

Reporter, *Strathurd.*Clerk, *Monro.**Dirleton, No 297. p. 145.*1710. *July 25.*JEAN CHALMERS, Relict of DAVID LYON of Banchrie, *against* His CREDITORS.

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A relict raised a reduction of her contract of marriage, upon minority and lesion. Objected, she had not revoked and raised reduction *intra annos utiles*.  
The Lords

JEAN CHALMERS, heiress of the south part of the lands of Wester Banchrie, and the mill thereof, yielding seven chalders of yearly rent, some months after her marrying David Lyon, without any contract, when she was about 15 years of age, entered with him into contract, whereby she disposed her heritage in favour of him and her in conjunct-fee and liferent, and the heirs and bairns to be procreated betwixt them in fee : and he obliged himself to provide 6000 merks of his own money, with the conquest during the marriage, to him and her, and the longest liver in conjunct-fee and liferent, and the heirs and bairns of the marriage in fee ; providing, that if David Lyon happened to die before Jean Chalmers, without children, she should not only liferent the 6000 merks

and her own heritage, but have power to dispose of four of the said 6000 merks; but in case of her surviving him, with bairns of the marriage, she restricted herself to the liferent of the 6000 merks, and the conquest; and if David Lyon happened to outlive her without children of the marriage, she had power to dispose of her heritage, without prejudice to his courtesy. David Lyon having died *obieratus* before his wife, leaving children of the marriage, she, to hinder his creditors from carrying away her fortune, raised reduction of the contract of marriage upon, *imo*, The ground of minority and lesion, seeing the husband could not authorise his wife *in rem suam*; *2do*, As being *donatio inter virum et uxorem*.

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repelled the objection, she having timeously after the dissolution of the marriage raised the reduction.

*Answered* for David Lyon's Creditors, *imo*, As minors can marry without consent of curators; so they can enter into contracts in contemplation of marriage; and the pursuer cannot be allowed to reduce upon minority and lesion, because she did not revoke *intra annos utiles*. *2do*, The disposition by the wife is not a revocable donation, because, there being no prior contract of marriage, it was for an onerous cause, 24th November 1664, M'Gill *contra* Ruthven of Gairn, Div. 10. Sect. 3 *b. t.* There was no lesion, the terms of the contract being equal and rational as matters stood at the time; and no supervening alteration in the husband's circumstances, which disappointed the wife's expectation by the settlement, can be a ground of restitution.

*Replied* for the pursuer, *imo*, She was certainly lesed, in not only quitting the fee of her estate, but also in excluding herself from the very liferent thereof, for an uncertain provision secured only by the husband's personal obligation, which is come to nothing. Besides, the condition that she should liferent her own and her husband's means, and have some power of disposal, is of no weight; seeing it depended upon an uncertain event, neither to be presumed nor desired, viz. the non-existence of children, which are the chief end of marriage. And there are not wanting decisions, where the Lords have reduced such contracts of marriage; witness that betwixt Castlehill and his Lady, who was afterwards married to Mauldsley, *voce* MINOR; and that betwixt Alexander Reid and Anna Byers, No 249. p. 6045. As to the practick M'Gill *contra* Ruthven, the lesion there did not appear so considerable, the wife being provided to a competent effectual liferent; besides, it makes against the defenders, for the Lords restored to her the liferent of certain sums assigned by her, without reserving her own liferent. *2do*, The pursuer's not revoking, and raising reduction *intra annos utiles*, can be no reason to exclude her pretensions; because she timeously after dissolution of the marriage revoked and raised reduction of the deed; and she was not *valens agere* during the marriage, being then as a minor *sub cura et reverentia marituli*.

THE LORDS sustained the reason of reduction founded on enorm lesion, to re-  
pone the pursuer to the liferent of her own heritage disposed by the contract;  
but repelled the allegiance of *donatio inter virum et uxorem*. See MINOR.

*Fol. Dic. v. 1. p. 407. Forbes, p. 432.*

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\* \* \* Fountainhall reports the same case :

July 14. 1710—JEAN CHALMERS, being heiress of the lands and mill of Wester Banchrie, she about the age of sixteen, marries David Lyon, chamberlain to my Lord Strathmore, without the knowledge of her mother, who was then alive ; and, about nine months after the marriage, there is a contract drawn up, wherein she disposes to him the lands *nomine dotis* ; and he, in compensation, obliges himself to have in readiness six thousand merks of his own means, and to take it to her in liferent, and to the bairns in fee, but does not provide her to the liferent of her own lands, but gives her the liferent of the half of the conquest. The husband being in great debts, and unable to satisfy them out of his own means, he gives his creditors infestment out of the lands he got by his wife ; and coming to die, and leaving children, his wife can find no effects of her husband's out of which to take her liferent ; and the creditors entering to her lands, and debarring her, she raises a reduction of her contract of marriage on these two reasons ; *1mo*, That it being entered into posterior to the marriage, it was *donatio inter virum et uxorem stante matrimonio*, and so revocable by her ; *2do*, That it was done by her in her minority, to her enorm lesion, and in a most clandestine manner, without the advice of her mother, or any of her friends, and deprived her of the property of her own lands, without so much as reserving the liferent thereof to her, but disposing the same to his creditors, so that he has left nothing to her to affect, except it be what came by herself. *Answered* for the creditors, to the *first* reason, This can never be called a donation *stante matrimonio*, but has all the privileges of a contract entered into before the marriage. To the *second*, Her minority is no reason ; for minors can lawfully marry without consent of their curators, and can dispose their means in a contract of marriage, especially if there be suitable conditions restipulated to them on the otherside, which is the present case ; for the heritage being but six or seven chalders of victual, was no more but a competent tocher if converted into money, and 6000 merks, with the half of the conquest, was no contemptible retribution ; and the case of lesion is not to be considered, as now it eventually occurs by the husband's dying in bad circumstances, but must be calculated as matters stood at the time of the contract, the terms being both fair and equal, law having fixed no standard what shall be the precise *quota* of heiresses liferent, but just as parties paction, as appears by the decision 24th November 1664, Macgill *contra* Ruthven of Gairn, Div. 10. Sect. 3. *h. t.* Besides, reduction on minority and lesion must be intended *intra annos utiles*, which this pursuer did not, being past 25 before she revoked and raised this reduction. *Replied*, There was no need of a revocation here *intra quadriennium utile*, for the deed was *ipso jure* null, the husband being curator to his wife, and so could never authorise her *in rem suam* ; and there is nothing more easy than to frame narratives and equipollent prestations on the

husband's side, as obliging himself to lay as much for-gainst the tocher, when in reality he has it not to secure her in it. Specious prestations may be stipulated where there is no subject to make it effectual, but only to be a sham *color quæsitus* to amuse and defraud the wife, and it was really so here ; for his 6000 merks was an imaginary provision no where to be found but in Eutopia ; neither is this doctrine new, for on such inequalities did the Lords rectify and reduce the Lady Castlehill's contract, at the instance of Carmichael of Maulsly, her second husband, in 1697, *voce* MINOR ; and lately, on the 28th July 1708, Anna Byres *contra* Reid, No 249. p. 6045., they reponed the wife to her own lands, the husband being *obætatus* and fled the country.

THE LORDS repelled the first reason, and found it no donation ; but sustained the second of enorm lesion, and therefore admitted her to liferent the lands she brought with her : but whether the fee of them would belong to her children, or to her husband's creditors after her death, was not decided ; though the Lords seemed to think the last would have the best right thereto.

*Fountainhall, v. 2. p. 586.*

\* \* The following case is the sequel of the above.

1714. December 14

The Lord GRAY, and other CREDITORS of the deceased DAVID LYON of BANCHRY *against* Mr WALTER STEWART.

My Lord Gray, and other creditors of David Lyon, having led an adjudication against his heirs, pursue a mails and duties, with a conclusion of declarator, that the lands of Banchry, disponed to the said David Lyon by Jean Chalmers his wife, in their contract of marriage, did belong to the said creditors adjudgers, as in his place.

Compearance was made for Mr Walter Stewart, second husband to the said Jean Chalmers, who produced a disposition to the same lands granted by his wife to him her second husband ; and *alleged*, that the first contract was entered into by her in her minority to her enorm lesion, in so far as she disponed the fee of her estate, without reserving her own liferent, in favours of her first husband, who had no estate whereby to make her any suitable remuneratory provision.

It was *answered* ; That a minor may lawfully enter into a contract of marriage, wherein if they be enormly lesed, they have the common benefit of restitution, but with the ordinary condition of revocation and reduction *intra annos utiles*, which she did not use, but continued satisfied with her contract till she was long past 25 years of age, and could not now impugn the contract, in prejudice of her husband's just and lawful creditors.

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A wife may revoke her contract of marriage made in minority, altho' the revocation has not been made *intra annos utiles*.