

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

No 117.

A minor is presumed to be lesed,

No III.
which need
not be prov-
ed *in limine* of
reduction;
nor is it ne-
cessary that,
before liti-
contestation,
the minor
produce a
right to the
property,
which is to
be subject of
the action.

infestment being expedied; thereafter, these lands are sold by the son, with consent of his father and curators to him, he being then minor, to Walter Riddel; whereupon the son pursues reduction against the said Riddel, and restitution against the said infestment, as done in his minority, to his great and enorme prejudice and lesion. The defender *alleged*, That no process ought to be granted at the pursuer's instance, except he shew and produced his title, which might give him interest to pursue this cause; for except he produce his infestment, whereby he had right, and was infest in the lands libelled, he can have no interest to pursue; and the pursuer *answering*, that he was not holden to produce any more right now *in ingressu litis*, seeing he shall produce his right *cum processu*; for the reason was founded thereupon, and it was *mediūm concludendi*, which he was not holden to produce before liti-contestation; likeas he could not produce the same, seeing the whole writs of the lands, and his writs were in the excipient's own hands, being delivered to him by the curators, the time of the alienation made to the defender, and which he refers to his oath; likeas he has process against him for exhibition of the said writs depending before the Lords; for this action tends only to restore him against that deed done by himself, and if he have no right, the defender cannot be prejudged by this pursuit; the LORDS, notwithstanding of this reply, (which was not respected) found no process, while the pursuer shewed and produced some right in his person made to him of the lands libelled; and therefore ordained the same to be produced before he insisted more in this reduction, or else *primo loco* that he should discuss his action of exhibition, which was thereafter justly altered.

March 21.—IN the action betwixt Hume of Ogstoun and Riddel, mentioned March 19. 1635, the LORDS changed that decision, and found, that the pursuer could not in law be holden to produce any right to the lands *in ingressu litis*; and therefore found process, notwithstanding that he produced not any such right; for if a minor had disposed another party's lands, whereto he had no right himself, process could never have been refused to him for not shewing that he had some right to that land; no more ought it to be in this case, where the disposition made by himself to this defender was only desired to be reduced, and any right in consequence, depending upon that disposition; and that disposition being produced, there was enough produced to sustain the action at the minor's instance; for the proposition is good, and is founded in law, *minor læsus est restituendus*, and the assumption being relevant subsumed thereupon, that the pursuer is minor and hurt, needs not to be instructed nor verified before liti-contestation, that the same be admitted to probation, and then he may prove it. *Partibus ut illic comparentibus*.

Act. Craig.

Alt. ———.

Clerk, Gibson.

Durie, p. 762.-763.