

and died, never quarrelling, nor revoking the same before her decease; in respect whereof, the LORDS found the contract sufficient and lawful, as said is.

Act. *Hepburn.*

Alt. *Nairn.*

Clerk, *Gibson.*

Fol. Dic. v. I. p. 410. Durie, p. 712.

No 331.

1635. February 26.

SLUMAN against KER.

JOHN SLUMAN heir served and retoured to Margaret Sluman wife to Mr Robert Ker of Broomlands, intented action of reduction against Mr Robert for reducing the contract of marriage made between him and the said umquhile Margaret, with consent of her curators, viz. the Chancellor, the Earl of Roxburgh, Mr James Drummond, Mr Francis Hay, and John Learmont; by which contract she disposed to the said Mr Robert her future husband, certain lands and tenements. The reason of reduction was, That by the common and civil law, no minor may dispoise their lands and heritage, either by way of vendition, donation, *nomine dotis, vel propter nuptias*, or otherwise, *sine decreto judicis*; and all deeds done otherwise by minors, and their tutors and curators, to their own or their heirs prejudice, are null, and they and their heirs may seek restitution against such deed within the time prescribed by law, viz. twenty-five years of age. But so it is, that the time of the said contract, she was fourteen years old, and died before she was twenty-one, and the contract containeth a disposition of her whole lands and heritage, in favour of Mr Robert and his heirs, failing of heirs to be procreated betwixt them; which disposition was to her and her heir's enormous hurt and lesion, the lands being worth 12,000 merks to buy and sell, for which she got no recompence, in so far as by the contract she was only provided to a liferent of 1000 merks by year, out of the lands of Broomlands, which was no way equivalent to the heritable right of her own lands, in regard of which disposition, without the authority of a Judge, in her minority, and being now revoked by her heir before she could have been twenty-five years, the said contract and disposition, with all that has followed thereon, should be reduced, &c. Withall, the pursuer produced a practick where Margaret Forrester, father's sister and heir to Elisabeth Forrester, had obtained a decret of reduction of a contract of marriage made betwixt Alexander Trail, son to the Laird of Blebo, and the said Elisabeth, upon the same ground. It being *alleged* by the defender, that the contract was solemnly subscribed with consent of the curators foresaid, unto whom the least suspicion of not fair dealing cannot be imputed, being persons of that quality; that there was no disparagement in the match, the defender being a gentleman of means, who might have got as much, or more, in tocher with another, having regard to his estate; that the recompence was equivalent; all her estate not exceeding 10,000 merks, (as was cleared,) and he having provided her in 1000 merks by year, and the liferent of the superplus, that could be got for her:

No 332.

A disposition by a lady, minor, with consent of her curators, in favour of her husband, found effectual.

No 332. lands above 8000 merks; in respect of all these circumstances, (which were not found in the practick produced) the LORDS assoilzied the defender, albeit the authority of a Judge was not interponed to the foresaid disposition, and that it was express against the civil law.

Spottiswood, p. 160.

1636. July 16.

HACKSTOUN *against* RUTHERFORD.

No 333.
A cautioner
for the adhe-
rence of hus-
band and wife
during life,
not liberated
by a tempora-
ry adherence.

MR DAVID KINLOCH being cautioner for David Hackstoun, that he should adhere to Rutherford his spouse, and after that caution, they adhering together, and bairns thereafter procreated betwixt them, thereafter they diverted. The wife, after the death of the cautioner, desired the bond to be transferred in the cautioner's heirs, and he *alleging* that the bond of cautionry was expired, seeing thereafter they had cohabited, and children since gotten betwixt them, whereby the effect of the bond was fulfilled, and the cautioner and his heirs were freed of the bond; and it being opponed that the tenor of the bond bore, that they should adhere during their lifetime; and now seeing he had diverted, she had reason to seek the bond to be transferred, the LORDS, in respect of the tenor of the bond, which bore, that the cautioner was bound that they should adhere during their lifetime, found, that the cautioner and his heirs were obliged for the husband's adherence during that time. And it being *alleged*, that he was content to adhere, and for that effect had a process before the Commissaries against her for adherence, and she *answering*, that the Commissaries had assoilzied her from that pursuit, because the husband would not find caution for her indemnity and entertainment, so that except the caution already found should be obliged to that, she could not adhere; the LORDS found, that the caution foresaid, found for the husband for his adherence, was only obliged that he should adhere, and was not obliged for her indemnity and entertainment, that clause not being expressed in the act of caution; and the husband being but a poor man, indigent of means, and a servant, who could not get such a particular cautioner for these particulars desired by the wife, they found, that they could not astrict the cautioner to such things as he had not bound himself to.

Durie, p. 816.

1662. November 20.

CHILDREN OF WOOLMET *against* DOUGLAS.

No 334. THOUGH a mutual contract betwixt a husband and wife is not revocable, yet, if it be very unequal, and the excess considerable, it will be presumed to have been intended as a cover for a donation, and therefore revocable.

Fol. Dic. v. 1. p. 410. Stair.

* * * See this case, No 12. p. 1730.