

1642. July 8.

INGLIS against AIKIT.

IN an action of reduction pursued by Anna Inglis, with consent of young Aikit her husband, against old Aikit her father-in-law, for reducing of her contract of marriage, upon the reason of lesion, minority, and revocation; wherein her husband compearing, and declaring that he would not concur nor assist this pursuit, the LORDS, notwithstanding of the husband's refusing to concur with the pursuit, sustained the process; seeing in effect now the process was betwixt the husband and his wife; for seeing the husband's father, who was defender, and was called in the process, was dead, and that the husband, who refused to concur with his wife, was heir to his father, whereby the husband became directly the party to defend the contract, therefore the LORDS sustained the pursuit, although betwixt the husband and the wife. *Item*, The husband alleging the wife to be past *annos utiles* before intending of this action, the wife alleging her minority then, was preferred.

Act. Stuart.

Alt. Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 406. Durie, p. 898.

No 255.

A wife, without concurrence of her husband, was allowed to insist against him in a reduction of her contract of marriage upon minority and lesion.

1673. June 4. LADY WAMPFRAY against The LAIRD her Husband.

IN a reduction pursued at the Lady's instance of her contract of marriage upon minority and lesion, against her husband, it was *alleged*, That the Lady, being married, could not pursue this, or any other action, unless she were authorised by the defender, who was her husband, which he did altogether refuse. It was *answered*, That the reduction being founded upon unanswerable law, and her husband, the person who had wronged her, he could not prejudice her of the ordinary remedy, wherein she and all other wives might be oppressed and wronged, if it were sustained that husbands might obstruct, by their refusing, all legal process: THE LORDS of Session, as in the case where pupils have action against their tutors, may give warrant to any other to authorise this pursuit in place of the husband. THE LORDS did grant warrant to the Lady's advocate, in place of the husband, to concur with this pursuit, and found the case alike with that of minors and their tutors and curators, without which the remedy of law could not be found to relieve both women and minors where they were extremely wronged.

Fol. Dic. v. 1. p. 406. Gosford, MS. No 582. p. 381.

No 256.

The Lords may authorise advocates to concur with married wives in their actions against their husbands.