

No 76.

the curators not being in this process, no probation of the delivery of money to them will bind them, but were there necessity, that they were both cited, and it instructed by writ.

THE LORDS repelled this defence, but severals inclined not to sustain process, till the curators were first discussed; and whether the minor was lesed or not.

Fol. Dic. v. 1. p. 138. Stair, v. 1. p. 468.

S E C T. XIX.

Citation in Reductions of Judicial Deeds.

1661. July 24.

MITCHELS *against* JOHN HUTCHISON.

No 77.

In the reduction of a retour, necessary only to call the Judge, the clerk, and the inquest.

JEAN and MARION MITCHELS having pursued John Hutchison, in *anno* 1659, for reduction of a decret obtained by him against them, as heirs to their father, upon minority and lesion; and also, because their service, the only ground of the decret, was reduced in *anno* 1656, wherein there was an act of litiscontestation now wakened; the defender *alleged* he got wrong in the said act; because, he having proponed a defence upon the pursuers behaving themselves as heirs, (no ways acknowledging their minority), he alleged they behoved to prove the reason, as well as the exception, seeing they were both consistent; yet the act ordained him to prove his defence of behaviour, but did not ordain them to prove their minority.—THE LORDS found this allegiance relevant.

It was further *alleged*, that the reduction of the pursuer's retour is not competent against this defender, to reduce his decret; because the said reduction was long posterior to his decret, and he was not cited to the reduction. The pursuers *answered*, they needed call none to the reduction of their retour, but the Judge, and clerk, and inquest; and though the defenders decret was anterior, they did not know the same, having been obtained when they were within twelve years of age, and never charged thereupon, before the reduction of their retour, and so they never knew it, nor were obliged to know it.

THE LORDS repelled this defence, and sustained the reason of reduction, unless the same were elided by the said defence, of behaving as heir.

Fol. Dic. v. 1. p. 138. Stair, v. 1. p. 55.