

but then the marriage ought to have been publicly in that method, as by himself, they not concurring; but seeing the pursuer had that respect for his friends, that he would not disoblige, or deal without them, and that they would not comply and concur in other terms than those of the contract; fair dealing would have required, that the defender should have complied with the friends, or openly refused; and then the Viscount was to hear their advice, and either to reject them, and marry without their concurrence; or comply with them, and break the marriage. But to deal privily without their advice, was unfair; and yet more so, in as far as the highest conditions for the Lady, and daughters of the marriage, were obtained suitable to the portion of the contract, as the Viscount's declaration expressly bears, and whereby there was a manifest lesion to the minor. And though, in some cases, reductions upon lesion are restricted to the true damage; yet in others, not; and the just punishment of clandestine dealing in a treaty of marriage, to the minor's lesion, ought to annul the deed *in toto*, upon both the reasons of reduction.

"THE LORDS repelled the defence, and reduced."

*Fol. Dic. v. 2. p. 22. Rem. Dec. v. 1. No 1. p. 1.*

1718. February 8. POLLOCK against CAMPBELL of Calder.

No 33.

SIR HUGH CAMPBELL of Calder, in his son Sir Alexander's marriage articles, became bound to provide his estate to his son and the heirs-male of the marriage "free of all charge and burden;" having reserved no power to provide younger children. He, at the same time, privately elicited from his son a promise to grant him a faculty of burdening the estate with L. 2000 Sterling to his younger children; which promise, Sir Alexander fulfilled about two years after the marriage, upon the narrative of the said promise, and that the marriage articles had been entered into in compliance with the bride's friends and lawyers, that there might be no stop of the marriage. Sir Hugh having exercised this faculty granted him by his son; in a pursuit against the heirs of the marriage, for payment of this sum, the LORDS found, that the particular communing betwixt Sir Hugh and Sir Alexander before the marriage was *in fraudem pactorum nuptialium*; and seeing the bond was granted by Sir Alexander, though posterior to the marriage, on the narrative of the said prior communing, and that the marriage articles were only made and granted by Sir Hugh in compliance with the bride and her friends; therefore, that the said bond was not binding on the heir-male of the marriage. See APPENDIX.

*Fol. Dic. v. 2. p. 22.*