No 121. and her children were left miserable; and the creditors *alleging*, That she could not say she was lesed, being provided to a competent jointure;—to which it was *answered*, That she was enormly lesed, by denuding of her estate, to be carried off by his creditors; and her jointure was but a name, nothing being left, either for her liferent or childrens' provision.——THE LORDS repelled that defence, and found the minority and lesion proved, and reduced the contract, in so far as concerned the disposition she had given of her own estate; only this did not take from the husband and his creditors the *jus mariti* to the rents of the lands during the standing of the marriage, and until the husband's death.

*Fol. Dic. v.* 1. *p.* 581. *Forbes. Fountainhall.*

*** This case is No 249. p. 6045. *voce* HUSBAND and WIFE.

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1710. *July* 14. CHALMERS *against* LYON'S CREDITORS.

No 122.

AN heiress married at the age of sixteen, without consent of her mother; and nine months thereafter a contract was made, whereby she disponed her heritage *nomine dotis*, and the husband bound himself to have in readiness a suitable sum of money, and to take it to her in liferent, and to the children in fee, without any provision to her of the liferent of her own lands, but giving her the liferent of half the conquest. The husband became *oberatus*, and gave to his creditors infeftment out of the lands, and died leaving children. In a reduction of this contract at her instance, upon minority and lesion, the LORDS sustained the reason arising from the above facts, and therefore admitted her to liferent the lands she brought along with her. But whether the fee of the lands would belong to her children, or to her husband's creditors after her death, was not decided.

*November* 12. 1714.—Thereafter the husband's creditors having adjudged the lands after his decease, as in his *hæreditas jacens;* the LORDS, in a competition betwixt them and the relict, sustained her reason of reduction of the fee, as they had done of the liferent, upon minority and lesion, unless the creditors would undertake to make out that the husband had a stock at the time of the contract for securing the wife in a liferent, though afterwards his means failed.

*Fol. Dic. v.* 1. *p.* 581. *Fountainhall. Forbes. Dalrymple. Bruce.*

*** This case is No 265. p. 6056. & No 266. p. 6059. *voce* HUSBAND and WIFE.

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No 123. 1729. *January* 29. MONCRIEF *against* CREDITORS of MITCHELL of Balbardie.

SOME years annualrent being resting to a minor upon an heritable bond, he not obtaining ready payment from the debtor, granted him a discharge thereof,

and took his moveable bond for the same, bearing interest. The debtor thereafter becoming bankrupt, the minor intented reduction *intra annos utiles*. The lesion condescended on was, That he discharged the annualrent arising from the heritable bond, whereas he ought to have taken a personal bond of corroboration in further security of these annualrents, without granting any discharge, which no man of experience would have neglected, being a method calculated to secure the creditor, without bringing any additional burden upon the debtor. The reduction was sustained. See APPENDIX. No 123.

*Fol. Dic. v.* 1. *p.* 581.

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1770. *January* 15. JANET LINDSAY *against* JOHN EWING.

No 124.
A disposition of heritage, granted gratuitously, by a minor in apparency, and without titles established in his person, reduced.

MICHAEL LINDSAY, portioner of Nether Balloch, was succeeded by his son John, who, in the year 1723, while in minority, in a state of apparency, and without making up any titles to his father's lands, disponed the same, failing heirs of his own body, to his uncle John Lindsay. There was every appearance of the deed having been gratuitous; for though it bore to be for onerous causes, &c. and proceeded upon the narrative of certain obligations upon the part of the disponee, it was not established, though averred, that any of these had been fulfilled, or that any price had been paid. John Lindsay the uncle disponed these lands to John Ewing, who got infeft upon the precept, and continued to possess the same down to the year 1754, when an action was brought against him at the instance of Janet and Agnes Lindsays, daughters of Michael, and apparent heirs to him, their brother John the disponee, in 1723, having died soon after that period.

Various reasons of reduction were founded on; and, owing to the defender Ewing not producing the disposition by John Lindsay to his author in 1723, the pursuer got into possession, and a variety of procedure, unnecessary to be detailed, followed. In the year 1765 the disposition was produced; and, after some farther procedure, parties joined issue upon the grounds of the original action of reduction in 1754, when Janet Lindsay restricted her conclusions, and craved judgment upon the following grounds: The apparency, defect of title in the person of John Lindsay the younger to grant the disposition 1723, under challenge, and that the same was gratuitous.

The question having been reported on informations, it was *pleaded* for Janet Lindsay; The nullities in the defender's right were intrinsic, and appeared on the face of the progress and titles themselves; the person last but one seised, appeared, from the titles produced, to have been Michael Lindsay; and as John Lindsay his son had died in apparency, without having made up any titles, or having connected his right, either by service or otherwise, with Michael Lindsay his father, he had of course no right in him which could be conveyed to another; and hence the disposition, with all that had followed thereon, was