

and took his moveable bond for the same, bearing interest. The debtor there-
after 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 corro-
boration in further security of these annualrents, without granting any dis-
charge, 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.

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

No 123.

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

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 appear-
ance 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 infest 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 Lind-
say 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

No 124.

A disposition
of heritage,
granted gra-
tuitously, by
a minor in
apparency,
and without
titles esta-
blished in his
person, re-
duced.

No 124. null and void. The objection to the titles and progress applied with equal force to Ewing; for the disposition in his favour specially narrated the rights of John Lindsay his author, and particularly mentioned, that John Lindsay the younger had made up no titles, and could transfer no right; so that he purchased *a non habente* with his eyes open, and must suffer accordingly.

Answered for Ewing; The pursuer could derive no benefit now from the want of title in her brother at the time of the conveyance; for, by passing by him, her immediate predecessor, who was three years in possession, and making up her titles to one more remote, she had fallen under the enactment of the statute 1695, c. 24. and hence she was bound to implement her brother's onerous deeds, and to supply any defects that might appear upon the disposition to John Lindsay the defender's author.

The following judgment was given: 'In respect that the disposition by John Lindsay to his uncle John the cooper was gratuitous, granted during apparen- cy, and without titles established in his person, therefore the Lords reduce the same;' and to this interlocutor, upon advising a petition and answers, they adhered.

Lord Ordinary, *Barjarg.*

For Janet Lindsay, *Geo. Wallace.*

For John Ewing, *James Colquhoun.*

Clerk, *Tait.*

R. H.

Fac. Col. No 11. p. 26.

1782. July 5.

OLIVER MELVIL *against* MR ROBERT ARNOT, Minister at Ceres.

No 125.
A slight act of homologation, occasioned by the influence of a father, and only a few days posterior to minority, not sufficient to bar *restitutionem in integrum.*

WHILE in the nineteenth year of his age, Oliver Melvil, jointly with his father David Melvil, granted certain bills to Mr Arnot. A state of accounts between the two last mentioned gentlemen, of which these bills were articles, having been drawn up, with a docquet certifying its justness and accuracy, this docquet, only fourteen days after his majority, was subscribed by Oliver, together with his father.

Oliver, on the head of minority and lesion, instituted, within the *quadriennium utile*, an action of reduction of these bills; against which action it was *pleaded*, That having, when arrived at full age, homologated them, by subscribing the docquet above-mentioned, he had precluded himself from all claim of restitution.

THE LORDS were of opinion, that the salutary privilege of *restitutio in integrum*, was not to be barred in a case like the present, in which the act alleged to infer homologation was of such a slight nature; especially as it occurred so very recently after nonage, and had proceeded from duty to a father.

They therefore adhered to the Lord Ordinary's interlocutor, 'finding no act of homologation on the part of the pursuer sufficient to bar reduction; and sustaining the reasons thereof.'

Lord Ordinary, *Westhall.*

Act. *Craig.*

Alt. *Hay.*

Clerk, *Horne.*

S.

Fol. Dic. v. 4. p. 7. Fac. Col. No 51. p. 80.

The subject MINOR is continued in Vol. XXII.