No 161. THE LORDS decerned the defender to refund to the minor so much as he would have saved, had he been restored *in integrum* against the said decreet.

Harcarse, (MINORITY.) *No* 701. *p.* 197.

No 162. 1682. *March.* MR RUTHVEN *against* SIR ALEXANDER HOPE of Carse's Son.

A MINOR being pursued for payment of his predecessor's debt, to whom he was served heir, he revoked, and raised reduction of the service, and craved he might be free of personal execution.

Alleged for the defender, The pursuer cannot be heard to reduce the service, without restoring the rents intromitted with by him and his curators since his entry.

Answered, Those rents were expended in the payment of debts.

THE LORDS assoilzied the defender in respect of the restitution; and here the minor was but eighteen years of age.

Harcarse, (MINORITY.) *No* 702. *p.* 198.

No 163. 1685. *January.* MR JAMES WRIGHT *against* ISOBEL BROWN.

AN heiress who with curators had intromitted with the mails and duties of lands her father died in possession of, being married during her minority, and the husband having continued in possession several years after her majority, and she being pursued by the father's creditors on the passive title *gestio*, she revoked, and raised reduction *intra annos utiles*.

Alleged for the creditors, That she could not be restored, or allowed to renounce, till her intromissions and her husband's were refunded to the creditors.

Answered, The husband's intromission could not be charged upon her; but he must answer for it himself.

Replied, As mails and duties fall under an apparent heir's testament *jure apparentiæ*, so the husband's *jus mariti* is a legal assignation, equivalent to a voluntary right from the wife, and must be purged as her deed before she be restored.

THE LORDS found the reply relevant.

Harcarse, (MINORITY.) *No* 711. *p.* 201.

No 164. 1697. *November* 11. HENDERSON *against* LAFREIS.

IN a reduction of a bond upon minority and lesion, it being *objceted* that the minor, at granting, was a writer, and attendant about the session, and therefore

ought not to be restored; the LORDS found that this did not exclude him from the benefit of restitution upon minority and lesion; but they ordained the charger to depone, that the articles of the account for the balance of which the bond was granted, were at the common rates, and not exorbitant. No 164.

Fol. Dic. v. 1. p. 585. Fountainhall.

*** This case is No 98. p. 5881. *voce* HUSBAND and WIFE.

1708. *December* 1.

The EARL of ABERDEEN, and other CREDITORS of GORDON of Rothemay, *against* GORDON *alias* BARCLAY of Towie, his Son, and his Curators.

No 165.
A minor, after being served heir, and intromitting with rents, finding the estate overburdened with debt, raised reduction of the service upon minority and lesion, and offered to account for the rents applied to his own use, but not for those embezzled by his curators, who were insolvent. The Lords refused to restore the minor against his service, except he counted to the creditors for the rents intromitted with by his tutors and curators, whether applied to his utility or not.

TOWIE having succeeded to two estates, viz. Rothemay by his father, and the estate of Towie by his mother, and being in his pupillarity, served heir, by his tutors, to his father, in the lands of Rothemay; and his curators now finding that estate overburdened with debt, he, with their concourse, raises a reduction of his service on minority and lesion, whereby he would turn the whole debts upon Rothemay, and keep his mother's estate of Towie free, though it is alleged that part of the debt was contracted by his father to disburthen his wife's lands of Towie; and it were but reasonable that every estate bear its own debt. *Alleged* for the Creditors of Rothemay, they could not hinder him to seek restitution against this service and retour, as the Roman law repones minors *contra additionem hæreditatis*; but that reposition must be understood *in terminis juris*, that he account for the rents of Rothemay, his father's proper estate, intromitted with by his tutors and curators these twelve years bygone, and restore the same to the creditors, which will exceed one hundred thousand merks, that the restitution may be mutual and equal on all sides, the law being clear, that *minorum restitutio* must be such *ut unusquisque jus suum recipiat, l.* 24, § 4. *D. De minor. Answered* for the minor, He is content to hold count for the bygone rents of his father's estate of Rothemay, and his tutor's intromisson therewith, in so far as the same came to his use, or were profitably employed, either as *locupletior factus* or *in rem ejus versum*, and to extend it farther, were to make his benefit of restitution wholly elusory and unprofitable; for what you give me with the one hand, you take it away by the other, if you make me accountable for the whole rent uplifted by my tutors; and it may be squandered and misemployed, either with paying their own debt, or luxurious misspending of the same, as happened in this case. Rothemay named Grant of Crichie and others to be tutors testamentar to his son; and so being his father's choice, were not obliged to find caution; and, after many year's intromission, having broke without making any account, there is no reason why this *damnum fatale* should fall on the minor, who could not help it, but rather on the