

Procurator for the Debt of either, is valid and secure from Reduction, unless the Minor's Lesion be very plain and enormous, and he have no Expectation of Relief or Indemnity from his Tutors or Curators Voet ibid.

¶ 17.

2<sup>o</sup> Restitution is allowed to Minors against extravagant and unnecessary Gifts tit. C. si advers. donat. whether simple or remuneratory Oddus de Restit. qu. 50. Art. 4. Under remuneratory Donations I comprehend Jochee and Gifts propter Nuptias. For tho a Woman is by no Law discharged to give all her Goods in Jochee l. 4. C. de pure dot. it is not always expedient to do so.

By the Dutch Law, as a Woman's whole Estate fit dotale by virtue of the legal Communion of Goods behoivt married Persons, unless it be otherwise provided by Statute. Therefore a Woman cannot be restored there upon Minority and Lesion, against a Disposition of all she has to her Husband & sustinenda Onera Matrimonij. Nor is a Man restored contra immo- dicam largitatem Sponsalitiarum, or against an excessive jointure given to his Wife: because the Woman perhaps would not have consented to marry, had she not been invitata aureo veluti umbra by Receipt of large Gifts or a great Dowry, of which she ought not to be defrauded after her Marriage Voet. Comm. ad tit. ff. de minor. N. 18. & 19.

By the Civil Law, a Female Minor may be restored if found lesed by granting an immoderate Jochee l. 4. C. si advers. dot. viz. such as the Husband's Quality, or the jointure he gave her did not deserve. And a Husband who is Minor may be restored against excessive Gifts propter Nuptias Arg. C. si advers. donat. or an extravagant jointure to his Wife.

By our Law, a Female Minor having disposed to her Husband and the Heirs of the Marriage, and these failing to his Heirs, above 3000 Pounds of Money and 1100 Aunds of Land, rent in Edinburgh, for a simple life-rent to herself of her own Land, and of 3 or 10 Chaldors of Victual out of her Husband's Estate: the Contract was reduced in order to give the Wife a more suitable jointure by a life-rent of all that belonged to herself besides the provision out of her Husband's Fortune; but sustained as to the Fee in Favour of him and the Heirs of the Marriage and his non substituted Heirs 22 November 1669 McGill contra Ruthven of Gordon. A Contract of Marriage was reduced at the Instance of the Wife upon this ground that she had in the 17 year of her Age disposed the property of her Heritage to the Husband who at the time was obaratus and not in a Condition to secure any suitable provision to her effectually. 27 July 1700 Byers contra Reid. An Heirship was was Minor, having not only quitted the Fee of her Heridge, but also excluded herself from

from a life-rent thereof in the Case of Children of the Marriage who happened to exist, for a provision secured to her by her Husband's personal Obligation, which came to nothing by his dying Bankrupt: she was found to have Interest to reduce the Contract upon Minority & Lesion, in so far as it cut her off from the life-rent of her own Property: Albeit she was by the Contract to life-rent her own and her Husband's Means, and to have some power of Disposal failing Children of the Marriage. 25 July 1710 Chalmers contra Creditors of Lyon. A Minor's Obligation in his Contract of Marriage to infect the Heir of that Marriage in the Fee of his whole Estate that was considerable, was reduced at his Instance with the Concurrence of his Creditors 7 March 1623 L. Barga-ny contra his Son. But another Minor who for 1000 Marks of Jochee obliged himself to infect his Wife in a life-rent of all his Estate and the longest during the Marriage, and failing Children of the Marriage to pay 5000 Marks and some other things to her Fa-ther, was allowed to reduce the provision to his Father in Law, but not his Wife's life-rent, no Creditor concurring in the Reduction albeit it was alleged, that if the Wife was the longest liver, the Children would be destitute of all mean of Subsistence 4 July 1632 Davidson contra Hamilton. For tho the Roman Law required an equal proportion inter Dotem & Dona- tionem propter nuptias, our Law doth not stint Husbands in the granting life-rent provisions to their Wives, where there is no complaint of Credit-ors wronged. The Fear about the Children's Maintenance, in case of their Mother's Survivorance was not regarded: Since that was an Uncertainty and she might happen to die before the Father, or they might die before she came to have the Use of her life-rent; and if she and they both should outlive the Father, Law would oblige her to alimnt them.

3<sup>o</sup> Altho hoc ipso quod a lite disceditur, videatur sufficienter transactionis causa esse l. 65. §. 1. ff. de cond. indol. yet if after Transaction with a Minor it ap-pear that he etatis lubricitate passed from a clear Right, which any person major scius & prudens would not have done, nothing hinders him to be relieved, and the other party to be retrocessed in Statu quo prius l. 1. & l. 2. C. si advers. transact. But the Curators of a Minor having bona fide bought a life-rent affecting his Estate; the Minor was found to stand to the bargain, notwithstanding of eventual Lesion by the life-renter's dying shortly after, tho a Cancer she had then in her Breast: in Respect the Curators knew not of it, and acted prudently in all Appearance. January 1691 Fletcher of Aberlady contra Murray of Blackbarony and others. The Faculties of Law in the Dutch Universities being thereafter consulted upon this case, gave a contrary Opinion to the following purpose. That tho a Tutor might transact an uncertain Plea for avoiding Expenses and the Hazard of losing the whole by a Sentence yet where nothing in the Minor's Right is controverted, but the Continuance

+ In us to this case Fountain-hill v. l. p. 625. of