

No 8. Earl of Home was denuded of his heritable right in favours of another person who was convened in this same reduction, neither was the Earl of Home obliged in warrandice of any of the rights disposed by him, and so he could have no prejudice, being allenary obliged to warrant from his own fact and deed; and so the process was sustained, notwithstanding of his minority.

Act. *Craig.*Alt. *Belbes.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 588. Durie, p. 213. & 216.*

1628. *March 21.* BALMANNO *against* YULE.

No 9.

Action was sustained against a liferenter, tho' the fiar was minor, and his right was involved, and contained in the same deed.

IN a reduction, Alexander Balmanno *contra* Yule, for reducing of an alienation of a house, in prejudice of the pursuer's tack, set to him by the annailzier, and whereon he had served inhibition before the alienation made to the defender's father in fee, and to his mother in liferent; and albeit the defender, son to the receiver of the alienation, was minor, and so 'qui non tenebatur placitare super hæreditate paterna,' as was so found here; yet the action was sustained against the wife, who was liferentrix, and the delaying of process against the minor was not admitted to stay process against her, albeit her security was in the same body of the writ, which was the minor's right, seeing the action concluded not properly reduction, but that the pursuer should be declared to have good right to bruk during the years of this tack, notwithstanding of that right made to the defenders, which the LORDS found might be tried against the relict, who was liferentrix, notwithstanding of the minority of the fiar; and because the duties of the lands set in tack for the bypast years, since the inhibition, were uplifted by the liferenter, the LORDS put it in her option either to restore the said bygones of the year, since the tack began, to the pursuer, or otherwise to let him bruk as many years after the tack expired, as he hath wanted since the inhibition, uplifted by her, as said is.

1628. *March 26.*—IN the reduction, Balmanno *contra* Rule, mentioned 21st March 1628, the pursuer's tack, whereupon he had served inhibition, being set to him by the husband of the wife, the wife being heretrix of the land herself, and she not consenting to the tack, and the heritable alienation being made by the wife and her husband together, after the said inhibition, which wife and husband were both living the time of the reasoning of this cause; the LORDS found no necessity to summon the wife, who was heretrix, to this reduction, seeing her husband, who was setter of the tack, was summoned; albeit it was *alleged*, That she was a necessary party to have been cited, seeing she is subject to warrant the alienation controverted, made to the defender.

Act. *Mowat.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 588. Durie, p. 366. & 371.*