

## No 74.

In a reduction of a tack, set by a kirkman, without consent of the patron, which tack was assigned to a third party, the Lords found no process, because only the assignee, and not the cedent, was called.

1630. *March 20.* MURRAY against M'KENZIE of Lochsline.

MR GEORGE MURRAY, sub-dean of Ross, sought a tack made by his predecessor to one Fraser, to be reduced, as being given without consent of the patron. Fraser had assigned it to M'Kenzie of Lochsline, which M'Kenzie was only called by the pursuer to hear and see the tack reduced. *Alleged* no process, because his cedent Fraser, to whom the tack was set, was not called.—*Replied*, No necessity to cite any but the defender, in whose person the right of the tack now was.—*Duplied*, The cedent being obliged to warrant it, should be called, who might allege something that the defender knows not of.—*Triplied*, Let him compare for his interest if he pleased, but he had no necessity to call him. THE LORDS found the exception relevant.

*Spottiswood, (ASSIGNATION) p. 21.*

\* \* \* Durie reports the same case thus :

A REDUCTION of a tack set by the sub-tacksman, pursued by the principal tacksman against him, to whom the right of that sub-tack was transferred and disposed, no party being convened in the said reduction, but only the said assignee made thereto,—THE LORDS found, That the sub-tacksman's heir, or apparent heir to represent him, (himself being dead) ought to be called to the reduction of the said tack ; and that it was not enough to convene the assignee, who had the only right to the same ; for that writ being quarrelled, some ought to be called, to represent him whom that writ concerned, and who was to be presumed to know more for sustaining thereof than the assignee could know ; therefore no process was found, while his heir or apparent heir were summoned.

Clerk, *Hay.*

*Fol. Dic. v. I. p. 138. Durie, p. 511.*

## No 75.

In a reduction of alienation of lands, which, with consent of curators, the pursuer had made when minor, the curators needed not be called, tho' they had given their own warrantice against reduction.

1637. *March 7.* VERNOCK against HAMILTON.

ONE Katharine Vernock, sister and apparent heir to — Vernock her brother, pursues one Hamilton for production and reduction of a disposition of land made by her said brother, he being minor, and albeit done with consent of his curators, yet being done to his enorm hurt and lesion, and in his minority, she desired the same to be reduced ; and likewise desired another disposition, made by herself to the same defender of the same land, to be reduced *super eodem capite*, viz. that she was minor and enormly hurt ; and it being *alleged*, That no process ought to be granted in this cause, because the libel bore, *That the minors were induced to these alienations, by the inducement of their curators*, and therefore no process ought to be found in this pursuit, while they were cited to defend,