

No 78. penalties or advantages; and the pursuer is content to satisfy the Duke what he truly gave out to Minto. It was *duplicated* for the defender, That he did not receive this possession from Minto, but from Sir John Whitefoord, who had it from Minto's Lady, and therefore was not obliged to restore it to Minto, but might defend his possession by any supervenient right, which would exclude Minto's right.

THE LORDS repelled the defence upon the gift of Minto's escheat; and according to the common forms of declarators of redemption, declaring the lands redeemed, and decerned the Duke to denude himself both of right and possession, reserving the Duke's gift of escheat and declarator thereupon, and all action of removing, and mails and duties for recovering possession, as accords of the law; but repelled the objections against his gift and declarator, which cannot be quarrelled by reply, but only by way of reduction.

Fol. Dic. v. 1. p. 599. Stair, v. 2. p. 561.

S E C T. VIII.

Incumbrances affecting the Subject, transacted by the Disponee, cannot be extended against the Disponer, bound in Warrantice, further than to pay the transacted Sum.

1610. February 7. Lady BAIKLIE *against* CRAWFURD.

No 79.

A LIFERENTER, whose liferent is evicted, pursued her author's heirs for warrantice of her liferent.—THE LORDS found an exception against the general warrantice, that it ought only to be restricted to one hundred merks a-year; because she had transacted and obtained right to bruik during her lifetime, for payment of an hundred merks yearly.

Fol. Dic. v. 1. p. 600. Haddington, MS. No 1792.

1632. March 8. LOGAN of Balvie *against* LAIRD of LUSS.

No 80.
Found in conformity with the above, that a person who has trans.

IN a suspension of charges, executed against Archibald Thomson, who was cautioner to the Laird of Luss, for relieving of the lands of Balvie, of all burden which might affect these lands, the same being sold by Logan of Balvie to the Laird of Luss, and ay and while the payment of the remanent of the price thereof by the Laird of Luss; the said Archibald was cautioner, to the effect

foresaid; and the Laird of Luss being distressed, by a sentence, recovered for pointing of the ground for an annualrent, wherein the creditor was infest out of the said lands by Balvie; and the said Archibald being charged to relieve the said lands of that burden; who suspended, upon this reason, That he ought to relieve him only in so far as he was distressed truly for the said annualrent, and for no more than he has paid to the annualrenter for his right; and the other *answering*, That albeit he had acquired that right *gratis* from the party to whom it was truly addebted, he ought either to be relieved of the whole, for the which the land might be lawfully burdened by that right, or else the party ought to show how he might be freed legally thereof; and it is unjust and unreasonable to restrict the warrandice to that which he paid for that right; for the party might have quitted the same for nought, or for less or more, as they agreed; notwithstanding whereof, the LORDS found, That the suspender was only holden to pay for the relief of the said distress, so much as was paid by the charger for the acquiring of the right of the said annualrent, the quantity whereof was found probable by the charger's own oath; and this was the rather done, because Balvie, for whom Archibald Thomson was cautioner, was a poor aged distressed person, and reduced to great necessity, and therefore the distress and warrandice was so retrenched.

Act. *Nicolson and Baird.*Alt. *Craig.*Clerk, *Gibson.**Fol Dic. v. 1. p. 600. Durie, p. 628.*

1634. July 1.

Mr ROB. GLENDINNING *against* L. BARNBARROCH.

BARNBARROCH having sold some lands to Glendinning which were holden ward of the Laird of Lauchop, which alienation bore simple warrandice, and particularly from all wards, and to obtain Lauchop's consent; and the said Glendinning having obtained the gift of recognition from Lauchop, and thereupon declarator, thereafter pursues warrandice against Barnbarroch, who *alleged*, That seeing he was secured by the acquiring of the recognition to himself, all cause of warrandice ceased, seeing he ought also to have intimate to the defender, and required him to have purchased the superior's consent before he took the recognition, which he would have done; and the pursuer *answering*, That it was as favourable to him to have taken the gift of recognition as to a stranger; likeas, the defender was obliged to purchase the superior's consent betwixt and a day, which has expired many years before he acquired this right; the LORDS repelled the exception and sustained the warrandice, but they retrenched the same to the sums paid to the superior by the pursuer for acquiring of the said recognition, with the expenses made by him since in plea, and prosecuting the same, and no further.

Act. _____

Alt. *Gilmor.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 600. Durie, p. 723.*

No 80.

acted an incumbrance affecting his lands, has no action against the proprietor bound in warrandice but for the transacted sum.

No 81.

A purchaser of land holden ward, taking the seller bound in absolute warrandice, and to obtain the superior's consent; if he purchase the gift of recognition himself, he may pursue for the warrandice, but can only recover what he paid to the superior and his charges.