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 compear 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 disponed, 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. 1. *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 warrandice 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 proces ought to be found in this pursuit, while they were cited to defend,

specially seeing they were obliged in the alienation, made to the defenders, to warrant the land to them ;—THE LORDS repelled the allegeance, and found no necessity to summon the minor's curators to any such pursuit, seeing there was nothing concluded in this process against them ; and any clause of circumvention done by them, which was libelled in this summons, the pursuer past from the same, and insisted only upon this reason of minority and lesion ; and the LORDS bad no respect to that part of the allegeance, bearing, *That the curators were obliged to warrant the alienations*, for that was no cause why the pursuer ought to be compelled to summon them ; and albeit the minor had *actionem curatelæ* against them, yet that debarred her not from this pursuit.

No 75.

Act. *Craig*. Alt. ——.

Fol. Dic. v. 1. *p.* 138. *Durie*, *p.* 835.

1667. *July* 2. LORD BLANTYRE *against* WALKINSHAW.

No 76.
In reduction of a bond granted in minority, if the assignation be intimated, the assignee must be cited *inter annos utiles*, and not the cedent.

THE Lord Blantyre pursues a reduction of a bond, as being granted in his minority. It was *alleged* for Walkinshaw, assignee to the bond, absolvitor, because there was no process intented against him *intra annos utiles*, till the pursuer was past twenty-five years. It was *answered*, That the defender's cedent was cited, to whom the bond was granted, and this defender's right will fall in consequence, and there was no necessity to cite him in the same way ; that the service of an heir may be reduced without calling of his creditors, or those that are infeft by him.

The defender *answered*, That his assignation was intimated before the citation against his cedent, which cannot be miskenned by the pursuer, to whom the intimation was made, after which the cedent had no right, and any citation against him was of no moment ; neither is the case alike to the reduction of a retour, wherein the reducer doth neither know, nor is obliged to know, the creditors rights.

THE LORDS found that the assignee, after the intimation, behoved to be cited *intra annos utiles*, but they sustained improbation against the citation, made against the assignee by way of defence. In this case it was not urged, whether the intimation was personal to the pursuer, or only at his dwelling house ; or whether it was recent before the citation ; for, if it were not personal, or recent, it were hard to oblige the pursuer to remember so transient an act, as an intimation.

It was further *alleged* by the defender, That there was no lesion, because he offered him to prove, that the sum was delivered to the minor's curators, at least to the minor and his curators jointly, who being persons abundantly *solvendo*, and very provident, the minor could have no lesion, seeing they were comptable. It was *answered*, *non relevat*, unless it were alleged *positive*, that the sum were *utiliter impensum*, for the minor's profit ; for, the minor has his option, either to pursue the curators, as intromitting, or to reduce his obligation, and