

No 78.  
rent by her husband, with consent of her father, who was infeft in the lands. Found that though the husband was never infeft, the wife's annuity could not be affected by tacks afterwards let by her father-in-law.

they could only point the ground for the duty of the tack, specially seeing the husband, who was the author of her right to the said annualrent, was never infeft, but the father, who set the tacks;—THE LORDS found, that seeing the father consented to the said contract of marriage, and that the tacks were set after the date of the relict's contract and security, that the same could not stay the pointing of the ground for the whole annualrent, whereof she was not prejudged by the said tack set sinesyne, as said is, albeit her husband was not infeft, in respect of the consent foresaid of the father, before these tacks were set.

Clerk, Scot.

*Fol. Dic. v. I. p. 438. Durie, p. 548.*

1665. July 4.

JOHN BOYD, late Bailie in Edinburgh, *against* MR WILLIAM KINTORE.

No 79.  
Consent of a wadsetter in a disposition with the reverser, found not to carry his right, he having assigned no part of the sums in that wadset.

THERE being mutual reductions betwixt Mr William Kintore and John Boyd, as to the rights of the lands of Mountlothian, John Boyd deriving right from Mr Robert Logan, to whom Logan of Coatfield, with consent of Mr James Raith, and who, for all right he had to the land of Mountlothian, disposed the same; and Mr William Kintore having apprised upon a decret against Coatfield, as cautioner for a tutor, and upon the act of caution inhibited, it was *alleged* for John Boyd, that whereas, by a former interlocutor, the day of , he having objected against Kintore's decret, that thereby the tutor and his cautioner were found liable to uplift the annualrent of sums that were in the hands of secure creditors, which the tutors had not uplifted, and to be liable for annualrent *post finitam tutelam*, now he produces a decision out of Durie, July 18. 1629, Nasmith *contra* Nasmith,\* whereby it was found, That a tutor having uplifted his pupil's annualrent, though very considerable, was not liable for any annualrent therefor; *2dly*, The reason of the Lords' decision then being, that albeit the tutor was not liable to uplift and employ the annualrent every year as it was due, yet he was liable once in the tutory; but it is offered to be proved, that he died two years before the tutory expired, in which time he might both have uplifted this annualrent and re-employed it; and therefore being prevented by death, he ought to be free, both of the annualrent itself, and of the annualrent thereof.

THE LORDS having considered the decision, found it so short,\* and not to hold forth fully the case, notwithstanding thereof, they adhered to the former interlocutor, and found, That tutors are obliged to uplift, and, once in their tutory to re-employ the annualrents of the pupil, albeit the debtor were secure; but if the case had been of rents of lands, the LORDS thought these ought to have

\* The case alluded to is in these words: 'In tutor's counts, the tutor or curator is not subject to the minor to pay annualrent for the annualrent received for the minor's principal sums, albeit the said annualrent received extend to great sums of money yearly, whatever the same be.'—Durie, p. 465.

been uplifted yearly, and to be employed on annualrent; but they found the second allegiance relevant, not to free the tutor of payment of the annualrent itself, though in secure hands, because he ought to have uplifted it, and had it ready; but found him free of the annualrent thereof, there being a competent time in which he might have given it forth, before the pupilarity passed, if he had not been prevented by death; but ordained Kintore to assign to Boyd the right of the annualrent, that he might recover the same from the debtors.

It was further *alleged* for Kintore, That Coatfield, the common author, his disposition to Mr Robert Logan, John Boyd's author, was after Kintore's author's inhibition. It was *answered*, That albeit the disposition by Coatfield to Mr Robert Logan be posterior, yet Mr James' Raith had a disposition of the same lands anterior, who, by consenting and joint disposing to Mr Robert Logan, the lands of Mountlothian, did in effect constitute him assignee to his anterior disposition, which is now accomplished by the adjudication, adjudging the right of the lands from Coatfield's heirs, and thereupon infestment has followed, by precepts out of the Chancellery, for supplying Coatfield's procuratory of resignation, which took no effect in his life. It was *answered*, That Mr James Raith's right being but a wadset, his consent cannot import the transmitting of his right, albeit he jointly disposed, seeing he transmits no part of the sums in the wadset, and therefore does no more in effect but restrict his wadset to the remanent lands, and consents that Coatfield should dispone these lands to Mr Robert Logan, and so it imports but *non repugnantiam*, and a provision that he nor his successor should not quarrel their right upon his anterior right.

Which the LORDS sustained. See No 40. p. 503.

*Fol. Dic. v. 1. p. 439. Stair, v. 1. p. 293.*

1667. February 23. EARL OF ERROL *against* HAY of Crimunmogat.

THE Earl of Errol pursues a declarator of redemption against Hay of Crimunmogat: It was *alleged* absolutor, because the defender stands infest upon a charter granted by Barclay, with the consent of the Earl of Errol, *pro omni suo jure*, long after the reversion granted by Barclay, whereupon this redemption proceeds. It was *answered* for the pursuer; *imo*, That the Earl only consents, and the charter bears that the sums were paid to Barclay, whose right produced is a wadset, granted by the Earl of Errol and Hay of Urie, bearing an express reversion to any lawful eldest son of Hay of Urie; which failing, to the Earl of Errol. *Ita est*, that the time the Earl subscribed this charter, Hay of Urie was alive, and had sons, at least *in spe*; so that the Earl of Errol had not thereby the right of the reversion, and therefore his consent, without any sums received, or any absolute wrrrandice, cannot extend to any supervening right, which he then had not actually, but *in spe et in apparen- tia*. *2do*, The Earl's consent to Barclay's disposition, who had only the right

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A wadsetter disposed his lands without mentioning them to be redeemable. Though the person who was substituted in the reversion consented to the disposition, it was found that he was not precluded from using the reversion.