

* * Durie reports this case :

No. 25.

The deceased old L. of Philorth having disposed certain lands to Hay of Crimonmogat, and in the contract of alienation, having expressly obliged him and his heirs, that he nor they hath done, nor should do no deed prejudicial to that heritable and irredeemable alienation ; his eldest son the time of that contract not being contracter, and having disposed a right, which he had in his own person, to these lands, to a third person, divers years before that contract ; by the which right the alienation made to Hay, as said is, by the father, was not valiable ; and the said son being served heir to his father, and the contract transferred in him as heir, and he charged to infest him, and to warrant the lands from that deed, done by himself before the said contract, in respect of the said clause, whereby his father obliged him and his heirs, that they had done no deed prejudicial thereto, which the charger alleged he ought to fulfil, seeing he was obliged thereto, by entering heir to his father sensyne ; the Lords found, that the foresaid clause of the said contract, whereby the father obliged him and his heirs, to infest the charger in the said lands, and to warrant the same from all bygone deeds done by them, was effectual to cause the said suspender, in whom the contract was transferred, as heir to him, to give to the charger an infestment of the said lands, and that the contract was not satisfied by the infestment given by the father, which infestment was not valid, in respect of the deed foresaid, done by the son before the contract : From the which deed the Lords found, that this suspender was obliged to warrant the father's alienation, he being now heir, albeit he was neither then contracter, nor could not be then heir to his father, who was living ; but he being now heir, it was found, that that clause, whereby the father obliged him and his heirs, that they had done no deed prejudicial, bound the son who was heir since, to warrant from that deed done before the contract, when he was not heir ; albeit that was no deed done by the son, but a right made to him of before.

The same decision was done again betwixt the same parties 22d July 1631, the same cause being then called.

Act. *Advocatus et Nicolson.*

Alt. *Mowat.*

Clerk, *Gibson.*

Durie, p. 529.

No. 26.

1629. July 14. LAIRD WARDHOUSE *against* The LAIRD BALONY.

In an action of warrandice *ex capite excambii*, the Lords found the summons relevant against the singular successor who was infest ———, by the King, and that in excambion of the lands now craved by way of warrandice.

Kerse MS. f. 200.