

1630. July 22.

WILLIAM SALMOND *against* EXECUTORS OF JOHN WEIR (OF ORE).

William Salmond pursues the Executors of John Weir for warrantice of an annual-rent out of a tenement sold by the defunct to the said Salmond, for the which he was distressed. It was alleged, that the executors could not be convened for warrantice of an heritable bond. To the which it was replied, that the distress being of a moveable sum, the pursuer had it in his option either to pursue the executors or the heir for the same; which the Lords sustained.

Auchinleck MS. p. 252.

No. 27.

* * Durie reports this case :

The deceased John Ore having sold a tenement by contract to Salmond, with absolute warrantice therein; the said Salmond pursues the heir of umquhile John Ore, to hear him decerned and declared to warrant the said disposition: And the defender alleging, that he ought not to be decerned to warrant, seeing there was no distress qualified, and also that he had a reduction intended, for reducing of that disposition; the Lords nevertheless decerned to warrant, seeing in effect that was but a declarator of the warrantice; but superseded all execution, while the pursuer were lawfully distressed; and found, that this decret should not be prejudicial any ways to this defender, to pursue his action of reduction of that disposition as accords.

*Alt. Gibson.**Clerk, Scot.**Durie, p. 553.*

No. 28.

1630. February 3. BROWN *against* LOGAN and FININE.

Parties bound in warrantice ought to have the plea intimated to them, and notwithstanding decree was given against the party that had warrantice was not respected; yet the persons bound in warrantice promitted to propone all their defences by way of suspension, which might have staid the said decree.

Auchinleck MS. p. 252.

No. 29.

1635. June 25.

GRIEVE *against* HEPBURN.

Hepburn disposes a tenement to certain persons in portions, and obliges him to relieve the buyers of an annual-rent of 100 merks, which lay upon the whole tenement. The party to whom the annual-rent is due, pursues pointing of the ground, or a part thereof, for the annual-rents. A. G. one of the persons distressed, intends

No. 30.

No. 30. a summons against Hepburn, who was become *non solvendo*, either to relieve himself of the said annual-rents for bygones, and in time coming, or to hear and see the avail of the said annual-rent modified by the Lords, to the effect he may have comprising of some real right for his relief and warrantice. Although this conclusion was a novelty, yet the Lords found it just, and decerned the defender either to find caution for paying the annual-rent, or else they would modify a sum whereupon the pursuer might comprise for the warrantice.

Auchinleck MS. p. 11.

* * Durie's report of this case is No. 1. p. 3345. *voce* DEBTOR AND CREDITOR.

1635. July 28. LADY CARDROSS *against* LORD CARDROSS Her Son.

No. 31.

Where the eviction happens by a supervenient law.

Lady Cardross being provided in her contract of marriage by her husband, to a quantity of rent of teinds, which her husband in the said contract was obliged to make worth yearly to her the quantity of the said rental, and by the course of this commission of Parliament anent Ministers' stipends, there being two chalders of the teinds contained in the said contract and rental, taken from her and assigned to the Ministers more than they had before, whereupon she charging her own son as heir to her husband, to warrant the said rental to her, and consequently to provide her to as much as was taken from her, and assigned to the Ministers, as said is; and he suspending and alleging, that he could not warrant her from any supervenient law, which, as it diminished and took away from her a part of her conjunct fee, so it took away that same part from him and his heirs perpetually, and for ever, and she ought to bear that burden for her life-time, which would lye on him and his posterity for ever, being done by a public and general constitution, for the public good, whereto all private interests ought to cede; and there being no fault on the part of the contracter, there ought no warrantice to be granted, except he had failzied; for he was obliged only to make that rental given up for her conjunct fee, should pay that quantity to her; and it is true that there is no failzie in the rental, but it holds good, albeit a part be taken from her thereof by a subsequent law, which cannot make him liable therefore; this allegiance and reason was repelled, and the Lords found that the suspender ought to pay the quantity of the rental to the charger, which decreased by taking away of a part thereof from her, and giving of it to the Ministers; and found that the supervenient law, prejudged not the party of her warrantice, albeit the rental was no less than the same quantity whereto it was extended in her contract of marriage, seeing it was not so much her, and by the contract it was obliged to be worth to her yearly so much; for if the whole teinds had been evicted both