

1672. *January 16*, and *June 20*. SANDILANDS of Couston *against* The EARL of Hadington.

*January 16*. IT was this day debated, whether a man having sold lands with absolute warrandice, and that they were free of all incumbrances and inconveniences whatsoever; the buyer afterwards finds they owe a servitude of thirlage, pasturage, or the like, to his neighbour's mill or lands; the question is, if he will get relief of the seller, upon the clause of absolute warrandice, because of this servitude or burden. *Advocates' MS. No. 299, folio 124.*

*June 20*. IN this action came to be debated that question marked by me *supra* at No. 299. The Earl disposes some lands to this defender, with absolute warrandice from all wards, reliefs, non-entries, recognitions, &c. and from all dangers, burdens, and inconveniences whatsoever, as well not named as named, &c. as also he disposes the lands *cum molendinis et multuris*. Before the disposition, there is a bond of thirlage of thir lands given by the former heritor to another man's milne. Couston finding so considerable a servitude and burden upon his lands, pursues the seller upon the warrandice for relieving him thereof; and ALLEGES, that where he had bought these lands at eighteen years purchase, he would not have given fifteen if he had known them to be affected with such a burden; that it would put us all to immeasurable trouble, if they should not sustain prior thirlage to be a contravention of the warrandice; that the general clause, of all other burdens should then have no signification; and that thirlage, pasturage, and all other things that can any ways make land of less value, must hereafter be specially inserted and warranted against. It may be as well said that a prior infetment of annual-rent granted by the disponent falls not under the warrandice, seeing it is but a servitude no more than thirlage. *Vide omnino l. 75 D. de Evictionibus, ibique DD.*

The Lords found that a man selling lands with absolute warrandice did not thereby oblige himself that the lands were free of astriction; and therefore found a constitution of a thirlage by the disponent, prior to his disposing, no contravention of his absolute warrandice.

My Lord Chancellor carried it in behalf of his nephew; but my Lord President reclaimed exceedingly, and protested it might not be a preparative for other decisions in time coming.

*Vide Joan. Superioris proœmium ad T. de Servit. in fine cap. Vide leges 169 and 189 D. de verborum significatione, ibique Alciatum et Wissembachium. Advocates' MS. No. 343, folio 135.*

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1672. *June 22*.

ONE being pursued for payment of a sum, he ALLEGED the same was a public debt, contracted upon the occasion of the late troubles; and that by act of Parliament in 1669, these debts were all suspended till they should give farther order thereanent.