

- No. 53. in reason, that he intended to secure himself by the clause of absolute warrandice, unless that thirlage had been particularly enumerated amongst the rest of the burdens, seeing hardly in any charter servitudes are set down in the clause of warrandice, and never any action was intended, or decret given upon that ground ; and if it were otherwise sustained, it would open a door to infinite pleas.

Gosford MS. No. 494. p. 259.

- No. 54. 1675. February 9. BURD against REID.

The Lords having formerly found, That the cedents of personal bonds, are liable only to warrant *debitorum esse*, but not *esse locupletum* ; it was pretended, that there being a question concerning warrandice of a right of annual-rent out of land, the same should be warranted no other way. But the Lords found, That the warrandice of lands, or of such real rights, upon or out of land, are absolute, unless they be expressly limited and qualified by their right.

Clerk, *Hamilton.*

Dirleton, No. 248. p. 118.

- No. 55. 1675. July 22. MENZIES against CAMPBELL.

A purchaser insisting for possession of the warrandice lands, the principal lands being partly evicted by a wadset, he was found to have access to the full rents of the warrandice lands, applying the superplus, more than the annual-rent of the wadset sum, for payment of the principal.

Gosford. Stair.

* * This case is No. 51. p. 10652. *voce* POSSESSORY JUDGMENT.

- No. 56. 1676. January 19. MENZIES against MENZIES.

No. 56.
Warrandice
of lands was
found not to
take effect by
a process
against the

Menzies of Castlehill infert his second wife, and the eldest son of the marriage, in the lands of Sokartoun with warrandice. William Menzies of Raw having right to this infertment, pursues this Menzies of Castlehill, as heir to his goodsir upon the warrandice, to pay the value of the lands, and the rents thereof 45 years past, upon this ground, that his goodsir before the contract had given an irredeemable

infestment of the lands to one Lockhart, who had possessed the same ever since, and craved an incident for producing of Lockhart's infestment. The defender alleged no process in this method, but the pursuer ought to have insisted upon the infestment against the tenants, and if Lockhart had defended them upon his right, he ought to have intimated the plea to the defender, especially in this unfavourable case, which hath lain dormant near 40 years. It was answered, That though that be the ordinary course, yet it is not exclusive of this order, and there was no reason to throw out expenses needlessly in a process that could have no effect.

The Lords found no process in this order.

Stair, v. 2. p. 402.

No. 56.
heir of the warranter, alleging that there was a prior infestment exclusive of the one warranted.

1676. July 1. LAIRD of AUCHINTUILL *against* LAIRD of INNES.

The Laird of Innes having disposed certain lands to Auchintuill, with absolute warrantice, *in anno* 1630; thereafter *in anno* 1643, there was an addition made to the Minister's glebe, to make it up four acres, according to the act of Parliament, out of the lands that were disposed, being kirk-lands; whereupon Auchintuill pursues recourse against the Laird of Innes, who alleged, Absolvitor, because absolute warrantice cannot extend to this case, which the buyer should and might have known, whether there was a sufficient glebe designed, and that the lands being kirk-lands, were liable to a glebe.

The Lords found, that the warrantice could not extend to a glebe of kirk-lands designed after the vendition, although by a law before the vendition, unless it had been specially expressed in the warrantice, it being a notour burden upon the land.

Stair, v. 2. p. 436.

No. 57.
Absolute warrantice of lands found not to extend to make good an addition to a glebe.

* * See contrary cases, Elphinston against Blantyre, No. 39. p. 16585.; Watson against Law, No. 44. p. 16588.; and Bonnar against Lyon, *infra*.

1678. December 14. DICK *against* BLAIRS.

Umquhile Janet M'Math having arrested a sum in the hands of Tyrie of Drumkilbo for satisfaction of a bond due to her by Kilspindie as principal, and the Lord Oliphant and others as cautioners, she was excluded by an assignation to the same debt granted by Kilspindie, intimated by a charge of horning before her arrestment; but thereafter having improved that assignation as false, Dick of Grange her son insisted against Sir Lawrence Oliphant as he who had apprised Drumkilbo's estate upon the false assignation, and thereby did enjoy the profits or price thereof in prejudice of the legal diligence by arrestment, to make pay-

No. 58.
Warrantice from fact and deed of the cedent, secures not from falsehood, to which the cedent was not accessory.