

## R E P R E S E N T A T I O N .

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1543. July 27. SINCLAIR *against* CONVENT of HOLYROODHOUSE.

**O**LIVER SINCLAIR called the Commendator and Convent of Holyroodhouse, to warrant to him the tiend sheaves of the \_\_\_\_\_, and claiming him to be restored thereto, because he had two years to run of his nineteen years tack thereof, made by the Abbot and now Bishop of \_\_\_\_\_ and convent of the said abbey, from which he was put by the forfeiture led against him, the which is now reduced in Parliament, and he by decret thereof decerned to be restored to all tacks that he had at the time of his forfeiture. It was *alleged* for the Abbot and Convent, that they ought not to warrant him *quia hæc evictio*.

Nevertheless THE LORDS decerned them to warrant the said tack set by the said Abbot and Convent, *quia litera assedationis facta dicto Olivero Sinclair in utilitate ecclesiæ et de jure successor tenetur ex contractu predecessoris*.

*Fol. Dic. v. 2. p. 345. Sinclair, MS. p. 55.*

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1565. March 2. DOUGLAS *against* FEUARS.

**I**N an action of reduction of infestment of feu-farm of the kirk-lands of \_\_\_\_\_ moved by Mr Archibald Douglas against the tenants thereof, the defenders desired a day to call their warrant of the executors of him who had set the said lands in feu-farm, the last possessors of the said benefit. It was *answered*, The said infestment made no mention of any sums of money received from the farmers, therefore they ought to have no warrant. It was *answered*, In respect of the yearly mail contained in their charter, the setter ought to warrant; likewise warrandice is given upon assedations. THE LORDS found, That the executors or heirs of kirkmen, in such cases, should not be obliged to warrandice, albeit

**No 1.**

An Abbot and Convent found obliged to warrant a tack let by their predecessors.

**No 2.**

When kirk lands are let in feu, found that the heirs and executors of the letter were not bound in warrandice, although the feuar paid money at his entry, because it was

No 2.  
presumed to  
have been ap-  
plied in *utili-*  
*tatem ecclesiae.*

the possessor had received money, as the defenders offered them to prove he had done by his acquittance; because the said money was presupposed to have been converted *in utilitatem ecclesiae*; and also refused to give them a day to call the successor, because the said Mr Archibald, pursuer, was successor, who was present at the bar, and so he should seek his warrant by way of exception, quia quæ de evictione tenet actio eundem ab agendo repellit exceptio.

*Fol. Dic. v. 2. p. 346. Maitland, MS. p. 207.*

1580. April 22.

LORD BOYD *against* ABBOT of KILWINNING.

No 3.  
An abbot and  
convent o-  
bliged to war-  
rant a feu  
granted by  
their prede-  
cessors.

THE Lord Boyd pursued the Abbot of Kilwinning to warrant to him a feu, set to him by his predecessor Hamilton. It was *answered* by Hamilton, That he ought not to warrant the same, because he was in feu of the same lands set to him by another person, which was confirmed first; and according to the act of Parliament made at Stirling, the first confirmation makes the feu to be available and stand, albeit it be last set, and the other feu to be taken away by exception or reply. To this was *answered*, That notwithstanding of the act of Parliament, yet he ought to warrant his predecessor's deed, because he knew the first set to be set *aut saltem scire potuit*, because it was subscribed by the same Convent et sic predictus commendatarius videbatur commississe crimen stellionatus in locando et alienando eandem rem duabus diversis personis. To this was *answered*, That he ought not to warrant; for how should he be decerned to warrant the thing which was null of the law? For the first feu being declared null in itself of the law, there could no warrantice follow upon the same. THE LORDS pronounced *definitive* the Abbot to warrant the said feu, albeit it was null in itself, and taken away by the first confirmation.

*Fol. Dic. v. 2. p. 346. Colvil, MS. p. 283.*

A. *against* B.

No 4.

A PRELATE may oblige himself, and his successors, to warrant lands disposed by him *titulo oneroso*, with consent of the Convent or Chaptour.

*Fol. Dic. v. 2. p. 346. Kerse, MS. fol. 9.*

1662. February

VISCOUNT of STORMONTH *against* THE CREDITORS of ANNANDALE.

No 5.  
A man may  
be served heir  
to the contra-  
vener of the

BY a tailzie under the Great Seal, the Lordship of Scoon, upon the resignation of David Viscount of Stormonth, was resigned in favours of the said David and the heirs male of his body; which failing, to Mungo and the heirs male of