

he cannot be decerned in warrandice, because the half of the bark was not evicted for want of a good security ; but by the iniquity of the Judge. The Lords ordained William Buchan to warrant the pursuer, and suspended the execution till a certain day, that the defender might reduce the Admiral's decret, if he could.

Auchinleck MS. p. 250.

No. 23.

1629. June 19. LA. PITFERRAN *against* Her SON.

In a contract of marriage, the L. of Pitferran being obliged to infest the Lady, then his future spouse, in the land therein contained ; and at the time of the said contract, some of the lands are standing under long tacks for many years, for small duties, which were set by her husband's father long before the said contract of marriage ; after the death of her husband, and after she had remained many years in possession of the said tack-duty, she charges her son as heir to her husband contracter, upon that clause obligatory foresaid, anent the giving of a valiable infestment to her, to warrant the said infestment from the said tacks, seeing the same were an impediment to the avail and efficacy thereof. The Lords found, that the heir was not obliged to warrant from that tack, it being set before the infestment, and the party not being obliged to warrant the lands from the same *specific* ; for the clause of giving a valiable infestment was found might subsist with the preceding tack, especially the Lady receiving the duty many years after the husband's decease, and she being otherwise well provided of a conjunct-fee.

Act. Nicolson.

Alt. *Advocatus et Lermonth.*

Clerk, Hay.

Durie, p. 447.

No. 24.
Warrandice
against tacks.

1629. and 1630. July 9. HAY *against* LAIRD of PHILORTH.

Hay of Crimonmogat pursues the Laird of Philorth, as heir to his father, to ratify and warrant the alienation of the lands of ———, made to the said pursuer by his umquhile father, and from his own fact and deed, and from the deed of his heirs. Young Philorth. alleged, he would warrant the said bond from any deed done by him since he was heir, or since the contract of alienation made of the said land to the pursuer ; but true it is, that the said young Laird, long before the contract, had disponed such right as he had of the said land in favours of another person, and was not able to warrant that deed done by him so long before his father's obligation, whereby he obliged him and his heirs before he became heir. The Lords repelled the allegiance, and ordained him as heir to warrant the said land from any deed done by him *quovis tempore*, for he had it in his choice to be heir to his father or renounce.

Auchinleck MS. p. 251.

No. 25.
Warrandice
from fact
and deed.