

from her and her husband by any law, it was not thought reasonable that therefore she should want warrantice of her conjunct fee.

No. 31.

Act. *Stuart.*Alt. *Advocatus.*Clerk, *Hay.**Durie, p. 776.*

1636. March 8.

DUNIPACE against LAWRIESTON.

No. 32.

The Lady Dunipace, as being infeft by her umquhile husband in the lands of ———, which he estimated to 30 chalders of victual, and, in case the said lands thereafter should be found less worth in yearly avail and duty, she is infeft in the lands of ———, in warrantice thereof, she pursues the L. of Lawriston, who was, after the Lady's right, infeft in these warrantice lands, to hear it found, that she ought to have recourse to the said warrantice lands for the quantity of eight chalders of victual, which the said principal lands inlaked in the yearly avail of the said thirty chalders. And it being alleged, That there ought no recourse to be granted to the warrantice lands for the alleged inlake in the principal in the present yearly decay of the said rental, because they offered to prove, that at the time of the acquiring of the pursuer's right, and by the space of ten years before, and divers years also thereafter, the principal lands paid no less yearly duty to the master than the whole duty whereto they were extended in the said pursuer's right; likeas her said umquhile husband, by a rental subscribed with his hand, sold the same at the same yearly avail; so that whatever decrease she presently sustains in the said rental, the same proceeds either from the misgovernment of her husband and herself, through whose distress the lands have been left lea, or else by the common calamity of the country, which universally has suffered by God's providence, through evil seasons and poverty, and decay of tenants; which casual case, as it has reached to most part of all the subjects of the kingdom, ought to be suffered also by the pursuer, in this hazard of her life-rent; seeing the defender, who is a singular successor, acquired these lands, and bought the same heritably, at the same rental, and with exceeding great other losses and prejudice, at her husband's hands; for which debt he was heavily distressed, having no other relief but these lands, which will not relieve him of the half of the burden which he has paid for him, and will be far more prejudged in the heritable right than she can be in her life-rent; whereas, if the Lord shall be pleased to bless the ground and the seasons, the lands will be all-sufficient to pay the said rental hereafter, as they have done before;—the Lords found this exception relevant to exclude the pursuer from her recourse to the warrantice lands acclaimed, specially the defender being a singular successor, *ex causa maxime onerosa.*

Warrantice that lands shall be worth so much a year.

Act. *Advocatus.*Alt. *Stuart.*Clerk, *Hay.**Durie, p. 802.*