

1637. July 7.

LA. BALBEGNO *against* L. BALBEGNO.

No. 33.

Where eviction happens by a super-venient law.

The La. Balbegno pursuing after her husband's decease, the heir of Balbegno, to warrant the lands of her conjunct-fee, from all annuities, teinds, and feu-duties, whereto her husband had obliged himself and his heirs to her in contract of marriage, and whereby she might bruik the conjunct-fee-lands provided to her, viz. the mains of Balbegno, and that the same might be made free and sure to her, worth 12 chalder of victual, conform to her contract of marriage; and in particular, she pursuing for relieving her of the annuity, imposed by the commission of teinds, and of the duty appointed to be paid for her lands, to the reader of the kirk, and whereby she might bruik the lands free without these burthens, as said is;—and the defender alleging, that the burthen of the annuity being laid on by virtue of an law, he ought not to relieve her thereof; and the reader's burthen should be born by the Lady conjunct fiar, who bruiked the benefit of the lands, during her lifetime;—the Lords in respect of the words of the contract, found, that the heir should relieve the conjunct-fiar both of the annuity and of the stent for the reader, which they found that the Lady ought not to pay, but the heritor, seeing she consented not thereto, in respect of the clause foresaid of the contract, whereby her umquhile husband had bound himself and his heirs, to relieve the Lady of the annuity, and teind-duties, and that the lands should be worth 12 chalder of free victual; and that the Lady libelled, and replied that the lands were not worth that duty, beside these burthens.

Act. *Nicolson, junior.*Alt. *Fletcher.*Clerk, *Gibson.**Durie, p. 849.*

1639. February 19.

FLEMING *against* ROBERTSON.

No. 34.

May warrandice lands be burdened to the prejudice of the warrandice?

Umquhile Robert Robertson infests John M'Duff in an annual-rent of £80, to be uplifted out of his lands of Belligallan, whereto Fleming is constituted assignee by M'Duff, who both desire the ground of the saids land to be poided therefore. And another Robertson compearing, and alleging, that he was infest in the lands of Leadgreen as principal, and these lands libelled in special warrandice thereof, and that long before the pursuer's right, and from the same author; likewise after the said infestment, their said common author and this defender, before the pursuer's right, transacted also together, that the disponent should retain the principal lands, and the defender, the warrandice lands, and either of them should rest satisfied therewith; conform whereto the defender has ever bruiked the warrandice lands these 14 or 15 years bypast, and the author the principal, and so the pursuer cannot seek poiding of these lands libelled; the Lords repelled this alleagance; for they found, that the defender's infestment of the land in warrandice, could be no impediment to the common author to give, nor to the pursuer to receive an in-