thereafter having disponed the same lands in favours of Mr. William Johnston, who did obtain the first infeftment; and being charged at the instance of Alexander Burnet, having right by assignation to the disposition in favours of Lesmore; the letters were found orderly proceeded; notwithstanding the suspender alleged the charger had no interest during the suspender's life; seeing he never did nor could possess, by reason of the reservation foresaid. And the Lords found a difference, when warrandice is craved upon a deed of the party obliged, and upon any other ground; and that as to his deed he may be charged to purge it, without necessity to allege a distress.

No. 42. though there would be no present distress.

Dirleton, No. 27. *p.* 9.

Stair reports this case:

John Johnston, having disponed the lands of Frosterhill to Gordoun of Lesmore, whose right Alexander Burnet having apprised, and by the apprising, having right to the clause of warrandice contained in the disposition; charges Johnston the disponer, to warrant the right against a posterior right, granted by him, to William Johnstoun, who had obtained first infeftment. It was answered, that the warrandice could have no effect, because there neither was, nor could be a distress, in so far as in William Johnstoun's disposition, John Johnstoun's and his wife's liferent were reserved, during whose life he could never distress Burnet. *2dly*, It was Burnet's author's fault, that for many years, he did not take infeftment, having long right before the second disposition. It was answered, that Johnstoun himself could never object this delay, to excuse his fraudulent deed, of granting double dispositions, whereby parties become infamous by the act of Parliament, 1540. Cap. 105. and unto the other point, albeit there was no present distress, yet there was unquestionable ground of a future distress, against which the defender could answer nothing, that could elide it, and who being but a naked liferenter, if no execution should pass upon the clause of warrandice during his lifetime, he would be fully frustrated.

The Lords decerned Johnston the disponer, to purge the posterior disposition, granted by him, and found neither of the allegeances in the contrary relevant.

Stair, v. 1. *p.* 398.

1666. *November* 10. Bowie *against* Hamilton.

No. 43. Found that absolute warrandice in the conveyance of an apprising, did only extend to the formality of

Hamilton of Silvertounhill having disponed to James Bowie certain lands, whereto he had right by comprising, and the said James being removed at the instance of a wadsetter, and having pursued upon the warrandice contained in the disposition; it was alleged by Silvertounhill, that though the disposition did bear absolute warrandice, yet by a margin subscribed, it was restricted to warrant only the formality of the comprising, and the truth of the debt, and the executions.

No. 43.
the diligence, and reality of the debt.

It was answered, That the warrandice being absolute in the body of the disposition, was indeed qualified by the margin, that it should only be extended to the warrandice of the lands, in so far as concerns the apprising and sums therein mentioned, (which are the words of the margin); and that the said warrandice imports that the disponer should not warrant simply, but as to the sums contained in the comprising; so that in case of eviction Silvertounhill should only refund the same; and the pursuer was content to restrict the warrandice to the sums paid by him. It was urged, that there being three kinds of warrandice, viz. Either absolute; only that the comprising was formal, and the debt just; or a restricted warrandice to refund the price in case of eviction; the last was medium inter extrema, and most equitable; and in obscuris magis æqua interpretatio est contra disponentem facienda, qui potuit legem apertius dicere; and if it had been intended, that he should warrant only the formality, and validity of the comprising, and reality of the debt, it had been so expressed.

Yet the Lords, by plurality of voices, found, that the warrandice should be interpreted, to warrant only the validity of the comprising, and the reality of the debt, that being the most ordinary in rights of comprising.

Dirleton, No. 44. *p.* 18.

1667. *July* 15. WATSON *against* LAW.

No. 44.
Absolute warrandice in a disposition of lands found not to extend to warrant lands designed for a horse and cow's grass by a subsequent law.

In the process Watson against Law, it was found, That kirk-lands are obliged to warrant from the designation of a glebe; though it was alleged, that *ex natura rei*, and not *ex defectu juris*, the said glebe was evicted.

Thereafter it was found in the same cause, That the designation being as to cows, and horse grass, and upon a law supervenient after the disposition, viz. an act in the late Parliament, the disponer ought not to warrant from a supervenient law.

Dirleton, No. 93. *p.* 37.

*** Stair reports this case:

James Law having disponed certain lands to John Watson, with absolute warrandice, and after the disposition there being a designation of a part of the land for horse and kine's grass to the Minister, conform to the act of Parliament 1661; Watson pursues for warrandice upon that distress. The defender alleged, absolvitor, because the distress is by a subsequent law, falling after the disposition. It was answered, *first*, That absolute warrandice does even take place in the case of a subsequent law, at least in so far as the pursuer suffers detriment; because, if the lands had continued, the defenders had been so burdened, and therefore is liable *in quantum lucratus est; 2dly*, This is no supervenient law, because the act of Par-