liament 1661 is a reviving of the Parliament 1649, which being rescinded in the said Parliament 1661, by a posterior act thereof, concerning manses and glebes, is declared to be valid, as if it had been made in the year 1649. It was answered to the *first*, That nothing can infer eviction or recourse, but that which had a cause anterior to the warrandice, unless it had been otherwise expressed; nor is it any ground, that if the disponer remained heritor, he had been liable, otherwise all other supervenient burdens would return, not only upon the immediate, but upon all the disponers; but all such accidental superveniencies are upon the purchaser's hazard, as well as the advantages are to his benefit. To the *second*, The time of this disposition, the Parliament 1649 was rescinded, and the new act was not enacted; neither by the new act is it declared to be effectual from the year 1649, as to the horse and kine's grass, but only as to the manse. It was answered, That was but a mistake of the draught of the act of Parliament, there being no reason wherefore it should be drawn back as to manses more than the rest; but it was the meaning of the act of Parliament, to revive the former act of Parliament in all points. It was answered, That the meaning of acts of Parliament may not be extended contrary to the words, neither can any thing be supplied that is omitted in a statutory act. No. 44.

The Lords found no recourse upon the distress arising from the act of Parliament 1661, and that the drawing back thereof being expressly as to manses, which is adjected as a limitation, could not be extended to the Minister's grass, which is statuted in a different way in this than in the act of Parliament 1649: From this the heritors are only to pay £20 of money, and in the former, lands were only to be designed; therefore found, that the distress being by a supervenient law, the warrandice did not reach thereto.

Stair, *v.* 1. *p.* 472.

1668. *July* 1. COLQUHOUN and M'QUAIR *against* STUART of Barscub.

No. 45.
Warrandice against the casualties of superiority.

The Laird of Barscub having feued certain lands to Colquhoun and M'Quair, to be holden of himself; in the contract of alienation there is a special clause, that because the lands are holden ward of the Duke of Lenox, therefore Barscub is obliged to relieve these feus of any ward that should fall in time coming. Thereafter Barscub dispones the superiority of these lands, and by the death of his singular successor, his heir falls in ward; whereupon sentence was obtained against the feuers for the ward duties, and the avail of the marriage, and they now pursue relief against Barscub's heir, upon the clause of warrandice above-written. The defender alleged, that the libel was nowise relevant, to infer warrandice against him, upon the said clause, because the meaning thereof can only be, that he as superior, and so long as he remained superior, shall relieve the feuers, which ceases, he being now denuded of the superiority; otherwise it behoved to have imported, that he should never sell the superiority without the vassal's consent,

No. 45.

which no law doth require; or if the lands had been apprised from him, he could not be liable for the ward of the appriser's heir, which is cleared by the ordinary custom, there being nothing more frequent in charters, than clauses of absolute warrandice; and yet none were ever overtaken thereby, after they ceased to be superiors. The pursuers answered, that their libel was most relevant, because this being an obligation, conceived in their favours by Barscub, not qualified as superior, no deed of Barscub's, without their consent, can take it from them, unless Barscub, when he sold the superiority, had taken the new superior obliged, to receive the vassals with the same warrandice; but now the new superior, not being obliged by this personal clause, Barscub the old superior, must remain obliged, especially in a clause of this nature, which is expressed for all wards to come.

The Lords repelled the defence, and sustained the libel, and found the superior (albeit denuded) liable for warrandice.

Stair, v. 1. *p.* 547.

1660. *January* 26. Boil of Kelburn *against* Mr. John Wilkie.

No. 46.
Warrandice in whatever terms conceived, found to extend no further than the sums paid out, and the expenses of the party.

Boil of Kelburn having gotten a commission from the Presbytery of Irvine, to uplift some vacant stipends, he gave bond to pay to them £850 therefore; and being thereafter charged by Mr. John Wilkie, collector of the vacant stipends, Kelburn paid him 600 merks; whereupon Mr. John gave Kelburn hisd ischarge of these vacant stipends, and of his bond to the Presbytery, with absolute warrandice of the discharge, especially bearing to relieve and free him of the bond to the Presbytery. Thereafter Kelburn was decerned to make payment of that bond. After a long debate Mr. John Wilkie compeared; whereupon Kelburn charged Mr. John to pay him the £850, with annual-rent and expenses, upon the clause of warrandice. Mr. John suspends on these reasons, *First*, That he was circumvened, never having read the discharge; 2*dly*, That clauses of warrandice, (however conceived) are never extended further by the Lords, than to the skaith and damage of the party warranted, which, if it be componed for never so little, the warrandice reacheth no further than the composition, and it can never be extended *ad captandum lucrum ex alterius damno;* so Kelburn having gotten stipend worth £850, he cannot seek the same back again, but only the £400 he paid out. It was answered, That albeit general clauses of warrandice be so interpreted, yet this is an express and special paction, to relieve Kelburn of this bond, which, if it had been *per se*, would have been valid, although without an onerous cause, and cannot be less valid, having so much of an onerous cause.

The Lords did take no notice of the reason of circumvention, Mr. John being known to be a provident person, but restricted the warrandice to the £400 received by the suspender, and annual-rents thereof, and the expenses of plea against the Presbytery; and found it nowise alike, as if it had been a paction apart, but