

No. 61. reason, that the warrantice could import no more but repetition of what Gordonston received, which was only £80. It was replied, That Clerk was seeking no benefit by the warrantice, but to be relieved of the distress, which he was specially obliged to warrant. It was duplied, That no intimation was made to Gordonston of the process inferring the distress.

The Lords found Gordonston liable to relieve Clerk of the whole distress, albeit the plea was not intimated to him, unless he can allege or instruct a relevant defence, that could have defended Clerk in whole or in part.

Stair, v. 2. p. 882.

No. 62. 1682. *January 6.* LUMSDEN *against* GORDON of Tarpersie.

Found that absolute warrantice in an assignation to a tack of teinds, did not make the disponer liable to a supervenient burden of augmentation to the Minister of the parish by act of Parliament.

Harcarse, No. 963. p. 274.

No. 63. 1682. *March.* GORDONSTON and NICOLSON *against* GEORGE PATON.

One who had disposed lands with absolute warrantice, being quarrelled for a liberty and servitude of casting some peats in a moss, granted by his authors *in anno* 1625, the Lords assoilzied the defender, in respect the servitude was so old, and notourly known, and so inconsiderable in these parts.

Harcarse, No. 1013. p. 288.

* * Sir P. Home's report of this case is No. 12. p. 14170. *voce* SALE.

No. 64. 1683. *February 20.* BONAR *against* LYON of Brigton.

Some acres of kirk-lands formerly disposed with absolute and real warrantice, being designed for a glebe, the party recurred upon his warrantice against the disponer.

For whom it was alleged : That this eviction happening by virtue of a public law, cannot fall under the warrantice, especially considering, that though his danger might have been foreseen, as arising from the nature of church-lands, yet the same is not expressly provided against in the clause of warrantice.

Answered for the pursuer : The clause of warrantice secures from all evictions, dangers, and inconveniencies ; *2do*, The present eviction doth not occur from any

supervenient law, but from the ancient laws of the kingdom, whereby church-lands are naturally liable to be designed for glebes.

The Lords decerned in the declarator of eviction.

Harcarse, No. 1014. p. 288.

* * P. Falconer's report of this case is No. 50. p. 9099. *voce* MINOR NON TENETUR, &c.

1683. *March.*

MR. NATHANIEL FYFE *against* WHITE, DEACON of the SHOEMAKERS in PERTH.

One having, for onerous causes, assigned a sum contained in a bond, and disposed an apprising that had followed thereon, with absolute warrantice, and pursued the receiver for the sum agreed to be given for the disposition and assignation.

Alleged for the defender: That the apprising was not a profitable right, the worth of the lands appraised being exhausted by preferable rights and diligences.

Answered: The warrantice, though absolute, can import no more, save that *debitum subest*.

Replied: Though absolute warrantice in the transmission of *nomina debitorum* imports only *debitum subesse*, yet it operates a full security and responsableness of the debtor, when rights and diligences of lands are disposed.

The Lords sustained the reply.

Harcarse, No. 1015. p. 288.

1683. *November:*

WHITE *against* Mr. NATHANIEL FYFE.

The above cause being again called, and it appearing from the assignation produced, that the bond was principally disposed and assigned, and the apprising consequentially, and that the appraised lands were not disposed, and that the clause of warrantice, though in the terms of absolute, did not warrant the apprising in special, but only the assignation in general. The Lords found, that the warrantice did import only *debitum subesse*.

It was informed, That the defender got a great ease of the apprising. It may be debated, That though the apprising, which is but a diligence, had been principally disposed, the warrantice should import no more; though *aliter* if the lands be disposed principally, and all the diligences *in consequentiam*.

Harcarse, No. 1016. p. 288.

No. 64.

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