

- No. 5. of the recognition, and so the annailzier was not obliged to warrant the buyer from the inconveniencies proceeding of the buyer's own fact and fault. It was answered, the annailzier knowing his lands to be ward, and binding himself duly and sufficiently to infest the buyer, he should have given him a charter, and purchased him infest by the superior before any sasine taken. The Lords considering the contract of alienation, whereby Moubray was obliged to infest Alexander Otterburn in Whitelaw, as freely as he held the same, either by charter and sasine following thereupon, or upon resignation, that the buyer was obliged to purchase the superior's consent, and because he took sasine before he got the superior's consent, the failzie proceeded upon his own default; and therefore they found the exception relevant to elide the warrandice.

Haddington MS. v. 2. No. 1770.

1610. *July 14.*

PORTERFIELD *against* KER.

No. 6.

Warrandice
from fact and
deed.

In an action pursued by William Porterfield of that ilk, as son and heir to Mr. John Porterfield of that ilk, against Daniel Ker of Kirkland, as son and heir to Thomas Crawford of Jordanhill, and Janet Ker his spouse, the Lords granted action for the bygone farms of the lands and Mains of Inchmain, which were set in tack by the said Thomas, and the said umquhile Mr. John, *in anno* 1571, for payment of £80, and that for 19 years, and that notwithstanding the said Mr. John never required entry at any time during the said space of 19 years; but that the said Thomas had *bona fides* to uplift the same in respect of a clause irri- tant contained in the tack, whereby it is provided, that if he failzie in payment of the duty, the tack should be null; which allegiance was repelled, in respect of the tack, which had a special time of entry therein contained; and that the setter had granted a receipt of the first year's duty in fore-mail, and had uplifted the mails and duties, in doing whereof he did against his own deed, and so was *in mala fide*. In the same cause the Lords would not grant to the pursuer other 19 years, because the hail 19 years were expired, and therefore they assoilzied from that part of the summons whereby he craved to be entered to the lands.

Kerse MS. f. 200.

1612. *February 4.*

LORD SANQUHAR *against* CRICHTON.

No. 7.

In an action of warrandice pursued by the Lord Sanquhar against William Crichton of Ryhill, the Lords assoilzied Ryhill, because, by the contract he was only obliged to transfer all tacks and rights which he had of the patronage of Sanquhar, without any clause of warrandice; and albeit it was answered, that the contract was mutual, and contained onerous causes, and that since the contract

in anno 1607, William Crichton for implement of the c assignment to a tack containing a life-rent, and 19 years; yet the Lord would grant no warrantice, the tack not being reduced upon the said William Crichton's death.

a special No. 7.

Kerse MS. f. 200.

Haddington reports this case :

By contract passed betwixt my Lord Sanquhar on the one part, and Barbara Carmichael, relict of the tutor of Sanquhar for herself, and taking burden upon her for William Crichton her eldest son, my Lord Sanquhar having discharged her and her son of all action competent by him against them for her tutor accounts; and having set them a tack of the lands of Cocksfute, and they having assigned, transferred, and disposed to him all right, title, tack, and possession, which they had or could pretend to the teinds of Sanquhar; the said Lord pursued William Crichton of Ryhill to warrant to him the tack of the teinds of Sanquhar set to him by Blackwood, Parson of Sanquhar, and disposed to the said Lord by the said contract. It was excepted by William Crichton, that he could not be obliged to warrant the said tack, because he had not subscribed the contract. It was replied, That his mother took burden for him; likeas, since his perfect age in the year of God 1607, he had homologated the said contract by making a particular assignation of all tacks, right, and title, which he had to the said teinds in favour of the said Lord, which assignation was relative to the said contract, and made in respect of the same. It was answered, That neither the contract nor assignation bound the defender to any warrantice, and when it was alleged that the contract was made for causes onerous, and so behoved to infer warrantice, the said William alleged, that the said Lord had received greater benefit than he had given to them by the said contract; and therefore the Lords found, that the said William having made no assignation to this particular tack, but only generally to all tacks, rights, and possession which he could pretend to the said teinds, that he had done no deed contrary to the assignation; but they found, that he should nowise warrant the tack, because he was not bound thereto by the contract, and that the tack was not reduced by any deed of his, but because he was deprived before the date thereof; and likeas, my Lord Sanquhar had bruiked the teinds 20 years by virtue thereof, because the tack was only reduced *a tempore litis intentate*; and therefore the Lords assoilzied from the warrantice.

Haddington MS. v. 2. No. 2402.