

No. 30. a summons against Hepburn, who was become *non solvendo*, either to relieve himself of the said annual-rents for bygones, and in time coming, or to hear and see the avail of the said annual-rent modified by the Lords, to the effect he may have comprising of some real right for his relief and warrantice. Although this conclusion was a novelty, yet the Lords found it just, and decerned the defender either to find caution for paying the annual-rent, or else they would modify a sum whereupon the pursuer might comprise for the warrantice.

Auchinleck MS. p. 11.

* * Durie's report of this case is No. 1. p. 3345. *voce* DEBTOR AND CREDITOR.

1635. July 28. LADY CARDROSS *against* LORD CARDROSS Her Son.

No. 31.

Where the eviction happens by a supervenient law.

Lady Cardross being provided in her contract of marriage by her husband, to a quantity of rent of teinds, which her husband in the said contract was obliged to make worth yearly to her the quantity of the said rental, and by the course of this commission of Parliament anent Ministers' stipends, there being two chalders of the teinds contained in the said contract and rental, taken from her and assigned to the Ministers more than they had before, whereupon she charging her own son as heir to her husband, to warrant the said rental to her, and consequently to provide her to as much as was taken from her, and assigned to the Ministers, as said is; and he suspending and alleging, that he could not warrant her from any supervenient law, which, as it diminished and took away from her a part of her conjunct fee, so it took away that same part from him and his heirs perpetually, and for ever, and she ought to bear that burden for her life-time, which would lye on him and his posterity for ever, being done by a public and general constitution, for the public good, whereto all private interests ought to cede; and there being no fault on the part of the contracter, there ought no warrantice to be granted, except he had failzied; for he was obliged only to make that rental given up for her conjunct fee, should pay that quantity to her; and it is true that there is no failzie in the rental, but it holds good, albeit a part be taken from her thereof by a subsequent law, which cannot make him liable therefore; this allegiance and reason was repelled, and the Lords found that the suspender ought to pay the quantity of the rental to the charger, which decreased by taking away of a part thereof from her, and giving of it to the Ministers; and found that the supervenient law, prejudged not the party of her warrantice, albeit the rental was no less than the same quantity whereto it was extended in her contract of marriage, seeing it was not so much her, and by the contract it was obliged to be worth to her yearly so much; for if the whole teinds had been evicted both

from her and her husband by any law, it was not thought reasonable that therefore she should want warrantice of her conjunct fee.

No. 31.

Act. *Stuart.*Alt. *Advocatus.*Clerk, *Hay.**Durie, p. 776.*

1636. March 8.

DUNIPACE against LAWRIESTON.

No. 32.

The Lady Dunipace, as being infeft by her umquhile husband in the lands of ———, which he estimated to 30 chalders of victual, and, in case the said lands thereafter should be found less worth in yearly avail and duty, she is infeft in the lands of ———, in warrantice thereof, she pursues the L. of Lawriston, who was, after the Lady's right, infeft in these warrantice lands, to hear it found, that she ought to have recourse to the said warrantice lands for the quantity of eight chalders of victual, which the said principal lands inlaked in the yearly avail of the said thirty chalders. And it being alleged, That there ought no recourse to be granted to the warrantice lands for the alleged inlake in the principal in the present yearly decay of the said rental, because they offered to prove, that at the time of the acquiring of the pursuer's right, and by the space of ten years before, and divers years also thereafter, the principal lands paid no less yearly duty to the master than the whole duty whereto they were extended in the said pursuer's right; likeas her said umquhile husband, by a rental subscribed with his hand, sold the same at the same yearly avail; so that whatever decrease she presently sustains in the said rental, the same proceeds either from the misgovernment of her husband and herself, through whose distress the lands have been left lea, or else by the common calamity of the country, which universally has suffered by God's providence, through evil seasons and poverty, and decay of tenants; which casual case, as it has reached to most part of all the subjects of the kingdom, ought to be suffered also by the pursuer, in this hazard of her life-rent; seeing the defender, who is a singular successor, acquired these lands, and bought the same heritably, at the same rental, and with exceeding great other losses and prejudice, at her husband's hands; for which debt he was heavily distressed, having no other relief but these lands, which will not relieve him of the half of the burden which he has paid for him, and will be far more prejudged in the heritable right than she can be in her life-rent; whereas, if the Lord shall be pleased to bless the ground and the seasons, the lands will be all-sufficient to pay the said rental hereafter, as they have done before;—the Lords found this exception relevant to exclude the pursuer from her recourse to the warrantice lands acclaimed, specially the defender being a singular successor, *ex causa maxime onerosa.*

Warrantice that lands shall be worth so much a year.

Act. *Advocatus.*Alt. *Stuart.*Clerk, *Hay.**Durie, p. 802.*