

Fairny to warrant the disposition for 13 bolls of victual, paid to the minister for his stipend, since the year 1646. It was *alleged* by Fairney, That the warrandice cannot be extended to minister's stipend, unless the warrandice had *per expressum* carried the same, especially seeing, since the date of the disposition, the Lord Melvile has been still in use to pay the minister, without seeking relief till now; and Fairny offered to prove, by Bogie, who was the bargain-maker, and by the rest of the Lord Melvile's curators, that the lands and teinds were bought according to a rental, which they paid over and above the minister's stipend. It was *answered*, That the absolute warrandice was opposed *per expressum* set down in the disposition, and that the price of the lands and teinds were equivalent thereto, being freed of the minister's stipend; and no tutor, curator, nor witness's oath, could be taken to take away writ.

THE LORDS, before answer, ordained the tutors' and curators' oaths to be taken.

Gilmour, No 37. p. 26.

1662. February 13. JAMES SLUMOND *against* WOOD of Grange.

JAMES SLUMOND having charged James Wood of Grange, to pay a sum wherein he was cautioner for the Laird of Balcaskie, to William Smith merchant in Edinburgh, who constituted Richard Potter assignee, who transferred the same to the said James Slumond, and suspends; the reason of suspension was, because this bond was paid, and retired by Balcaskie the principal debtor, who took a blank translation thereto, from Potter the assignee, which translation, with the bond itself, were surreptitiously taken out of his coffer by James Hay, who filled up this charger's name therein; likeas, the suspender produced a declaration of Potter, that the sum was paid to him by Balcaskie, and therefore the suspender craved, that the oaths of this charger, the said James Hay, and Potter, and also the witnesses who were present at the payment of the sum, might be taken before answer.

Which the LORDS granted, albeit the charger had the translation for an onerous cause.

Stair, v. 1. p. 100.

1662. July 5. DUNCAN DRUMMOND *against* COLIN CAMPBELL.

DUNCAN DRUMMOND pursues Colin Campbell for payment of a debt of his father, because, in a writ betwixt his father and him, the father had disposed all his moveables to him, and he had undertaken his father's debt, whereby the pursuer, as creditor, had interest to pursue him to pay this debt; the defender having *alleged*, That the bond and disposition was never a de-

No 70.
to the extent
of warrandice
in a disposi-
tion.

No 71.
Witnesses
received to
prove pay-
ment of a
bond.

No 72.
Delivery of a
writ probable
by the notary
and witnesses
inserted in it,
where it was