

feftment out of the warrandice lands ; which infeftment, the Lords found effectual, to burden the said warrandice land, notwithstanding of the defender's infeftment thereof, granted to him in warrandice of the principal lands difponed, ay and while he were legally diftressed in the said principal lands difponed ; and found, that the transaction, (fpecially being alleged to be verbal, and not offered to be proved to have been by writ) was not impediment to the pursuer, to bruik validly the right of the said annual-rent out of the lands foresaid, difponed in warrandice, nor yet to the excipient, to have recourse to the principal lands difponed to him, notwithstanding of the alleged transaction.

*Durie, p. 875.*

No. 34.

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1662. February 4. LORD MELVIL *against* LAIRD OF FAIRIN.

The Lord Melvil pursues the Laird of Fairin, for warrandice of a difpofition of certain lands and teinds, sold to my Lord by him, with absolute warrandice, and condescends that the teinds were affected with 13 bolls by a locality to the Minister *in anno* 1641. The defender alleged absolutor, because this diftress was known, or might have been known to the pursuer the time of the bargain, at least to his tutors who made the bargain. *Secondly*, there is no legal diftress but voluntary payment made all the years bygone.

The Lords repelled the defence ; and found, that seeing the diftress by the stipend was unquestionable ; payment made thereof without process, prejudged not, and that the pursuer's knowledge could work nothing, being then a pupil.

*Stair, v. 1. p. 91.*

No. 35.

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1662. June. PURIE *against* LORD COUPER.

By a minute of contract betwixt the Lord Couper and the Laird of Purie Fotheringame, Purie having a right of wadset, and comprising of certain lands, pertaining to the Lord Balmerinoch ; the Lord Couper taking burden upon him, difpones a parcel to Purie, and obliges himself to cause Balmerinoch difpone with him, with warrandice mentioned in the minute. Couper being charged upon the minute, suspends upon this reason, that it is imprestable by him to cause Balmerinoch subscribe, and he is content *præstare damnum et interesse*. It was answered, That it is not a fact impossible of itself ; and he being expressly bound to it, he ought precisely to fulfill it ; especially, seeing Balmerinoch being his brother's son, he ought to have considered his own difficulty in it. Likeas, Purie was content to take a right from Couper himself, of the lands, and real warrandice out of his other estate, in case of eviction by Balmerinoch.

The Lords found, that Couper should difpone, taking burden upon him for Balmerinoch, and should be obliged personally to the warrandice mentioned in the

No. 36.  
Obligation that a third party shall grant warrandice.