

No. 39. gard the eviction was by a supervenient law *in anno* 1649, they declared they would hear the parties farther *in presentia*.

Gilmour, No. 88. p. 68.

1664. June 16. WILLIAM HAY *against* JOHN NICOLSON.

No. 40.

A clause of warrantice "against all deadly" contained in an assignation of a bond found not to extend to the solvency of the debtor.

John Nicolson having an assignation *in anno* 1653, of a bond granted to him by James Crichtoun, Sheriff of Nithsdale, principal, and umquhile William Livingstoun cautioner, the name of the assignee was left blank till 1663, at which time William Hay's name was filled up, and which assignation contained a clause of warrantice against all deadly, as law will. William Hay having used execution on the assignation, against the principal and cautioner in the bond, returns upon the warrantice, and charges Nicolson; who suspends on this reason, that the clause of warrantice, as it is conceived in the assignation, could import no more, than that the debt assigned, was a real debt resting, and not to be evicted by any other right; especially seeing it did not bear expressly, to warrant it to be good, valid, and sufficient, which might infer to warrant, not only the assignation should clear the right of the debt, but that the debtor should be *solvendo*. And *secondly*, considering that there is no onerous equivalent cause for granting the assignation, Nicolson the creditor might have discharged Livingstoun the cautioner, and given him an assignation that he might thereupon charge the principal. The charger opposed the clause of absolute warrantice; which clauses have ever been esteemed to reach to the debtors' being *solvendo*.

The Lords found the clause thus conceived, could not extend to the sufficiency of the debtor.

Stair, v. 1. p. 198.

1665. February 15. BOYD *against* TENANTS OF CARSLUITH.

No. 41.

A superior being bound to warrant his vassal against wards *per expressum*, this was found only to comprehend wards already fallen.

Stair.

* * This case is No. 11 . p. 7758. *voce* JUS SUPERVENIENS, &c.

1666. July 17. BURNET *against* JOHNSTON.

No. 42.

Warrantice found to give recourse,

Johnston of Frosterhill having disposed his lands with absolute warrantice in favours of Gordon of Lesmore; reserving his own and his wife's liferent; and