

being a specialty in a clause of warrantice, it was to be interpreted accordingly, *pro damno et interesse* only. No 46.

*Stair, v. 1. p. 593.*

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1669. *June 25.* HALIBURTON *against* HUNTER.

Alexander Haliburton having sold the lands of Balgillo to one Hunter of Burnside, with absolute warrantice, and after payment of a part of the price, having gotten a bond of 17,000 merks as the remainder; he did assign Mr. Thomas Haliburton, his nephew and apparent heir, and several others his creditors, to 11,000 merks thererof; whereupon the said Mr. Thomas having charged for 8000 merks, which was his part, they did suspend upon these reasons: That the bond being for the price of the land, and the seller being obliged by the disposition in absolute warrantice, he ought first to purge the land of bygone, and of an inhibition, at the instance of Kinloch of Bandoch. It was answered, As to the bond charged upon, there was no provision but to warrant from all deeds and infeftments, whereupon inhibition was served, following upon Haliburton's own fact and deed, and the said two particulars did not fall under that condition. The Lords found, that public burdens due by Haliburton, and not paid, did fall under the condition; and for the inhibition at Kinloch's instance, seeing there was no distress, and that it was not upon Haliburton's deed but upon the Lord Gray's, his author, alleged to have been served above 40 years ago; notwithstanding thereof, the letters were found orderly proceeded; but withal the Lords declared, that in case the lands should be thereupon evicted, that it should be reserved to the suspender to reduce Haliburton's assignation, as granted to an apparent heir for no onerous cause, or upon any other grounds of law relevant.

*Gosford MS. p. 59.*

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1671. *November 24.* BARCLAY of PEARSTOUN *against* LIDDEL.

Robert Liddel having granted an assignation to Sir Robert Barclay, of a bond granted by the Laird of Reidcastle, which assignation contained absolute warrantice in these terms, obliging to warrant the assignation to be good and valid and effectual at all hands; and Reidcastle's estate being comprised both by Robert and others, he charges Liddel upon the warrantice; who suspends, and alleges that the warrantice of an assignation in these or the like terms can import no more than that the debt is a true debt, safe against all exceptions of law, but cannot import that the debtor was *solvendo*, for that never having been declared either by custom or decision, recourse must be had to the civil law, which we ordinarily follow where our own law or custom fails; by which it is clear, L. 4. D. De. hæredit, et actione vendita, that venditor nominis tenetur præstare debitum sub-

No. 47.

Warrantice from fact and deed entitles the purchaser to relief of the public burdens due out of the lands before the date of his right.

No. 48.

A clause of warrantice in an assignation found not to import the responsibility of the debtor at the time.