

1671. *July 18.* BLAIR of ARDBLAIR, and ISOBEL STEWART, his Wife, *against* The LAIRD of BETHAICK.

BETHAICK being decerned, by decret of the commissaries, to pay six years' annualrents of the sum of 8000 merks, belonging to the children of the said Isobel Stewart, as part of the sum of £10,000, for which the Earl of Errol was principal, and Bethaick cautioner; the said Isobel did grant a discharge, bearing a receipt of these annualrents, with an obligation to warrant, not only for these years, but for all bygone years since the date of the bond: whereupon having charged the said Isobel, as being distressed, at the instance of her children, as having right, by assignation, from old Sir William Stewart, their good-sire, who was liferenter of the said sum, he did charge the said Isobel, upon the warrandice contained in the discharge granted by her, as said is; which was SUSPENDED, upon this reason:—That the discharge, containing a particular sum due, for some preceding years' annualrent only, the warrandice could not be extended to any former years; that clause being only put *in terrorem*: and the suspender being but a woman, and ignorant of the importance thereof, it ought not to militate against her, to make her farther liable than for the sums received.

It was ANSWERED for the charger, That the clause of warrandice was opposed; which not being ordinary, but singular, in that it did extend to all bygone years, since the date of the bond,—and Sir Gilbert Stewart, who was sheriff-depute of Perth, and commissary of Dunkeld, being both witness to the discharge, and having all former discharges in his hands, did transact that whole affair, as intrusted by her;—it was hard now, after fifteen years' time, that the said Isobel's children, to whom she was tutrix and executrix, should distress the charger, and he not have the benefit of the said obligation of warrandice, subscribed by her, being *major, sciens et prudens*.

The Lords, in respect of the conception of the warrandice, and that it was drawn by the advice of a lawyer, did find that it was obligatory; and therefore found the letters orderly proceeded.

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1671. *November 3.* MR ARCHIBALD TURNER *against* The LORD BORTHWICK.

MR Archibald Turner, as having right from the relict and bairns of the deceased minister of Borthwick, pursuing for the whole stipend the year 1669, as an annat due by the law, he having died in April that year:

It was ALLEGED, That, the time of his death, the half of the corns not being sown, he could have right only to the half of the stipend payable out of the tithes.

It was ANSWERED, That the Lords, by their several practicks, had decided,—That, where ministers die before the first of January, and after Michaelmas preceding, they get the whole preceding year's stipend. As likewise, that of late they had given their opinion, as said is, upon a *quære* proponed to them by the Privy Council, concerning vacant stipends, finding that the first of January and Michaelmas were the legal terms in the case of annats.