

evident he had taken his hazard of all the burdens that afterwards might befall them; but, if he paid a full and adequate price of sixteen or seventeen years' purchase, as lands fell, then he should have regress. But the plurality (abstracting from this inspection,) found, where warrandice was given for teinds, That, in case of supervenient laws, or augmentations to ministers, there could be no recourse, but only if they be evicted by a fact and deed of the disponent, or *ob defectum tituli*. See Craig *de Warrantizatione*; and Dury, 27th March 1634, *Lady Dumfermlin*; and 28th July 1635, *Lady Cardrose*; and 10th July 1676, *Auchentoul*. So the only remedy against these notour burdens is to insert them *nominatim* in the warrandice, and provide specially against them *in omnem eventum*.
Vol. I. Page 598.

1695. February 12.—Arbruchell reported William Home of Linthill against the Laird of Wedderburn and Beton of Blebo, mentioned 24th January 1694. The Lords had found, That a part of the teinds disposed being evicted by an augmentation of £161 yearly, given to the minister of Ayton, there could be no recourse upon this distress; teind being naturally liable to ministers' stipend, and not liable for warrandice, save either in an express contravention by some fact or deed, or else *super defectu tituli*. Yet the Lords found, in this case, he might recur on his warrandice; because it was not formally a disposition of teinds, but a pension of six chalders of victual out of these teinds. *2do*. He had paid as much for them as if they had been stock; and, if they would retrocess him to the apprising he had disposed, he was content to quit his right to these teinds. *3tio*. He had provided himself with real warrandice; and *quorsum* took he that but to secure himself in all events?
Vol. I. Page 668.

1695. February 13. The DAUGHTERS OF IRVINE of LENTUSH against IRVINE of DRUM.

PHESDO reported the Daughters of Irvine of Lentush against Irvine of Drum. The Lords thought it very informal to libel an exhibition *ad deliberandum*, as apparent heirs, and yet to insert a conclusion for their 8000 merks of provision, that he might be decerned to pay it; as also, that they could not insist for their portion, as heirs-female, of the marriage *designativè*, till they were first cognosed, though it needed no service. But the Lords found they were only personal creditors to their father, and his heirs of tailyie, on their mother's contract of marriage; and so had no interest till they established a title, by adjudication in their person, on Drum's renunciation to be heir; which he offered; and then they might compete. At which time it would be proper to determine whether his qualified fee could empower him to grant so great a jointure, and so large provisions to his wife and bairns, out of so small an estate; and how far Drum may be reached for granting a second right of the lands *in quantum lucratus*; and if the irritancies only restrained Lentush from gratuitous arbitrary deeds, and not from rational and onerous ones.
Vol. I. Page 668.