

1698. December 23. BOTHWELL against CHILDREN of PRESTON.

In this case, Hary Bothwell of Glencorse against the children of Sir Robert Preston, who had led an adjudication of the estate for an old tocher; and Glencorse resolving to purchase the same; they entered into a minute, whereby they are obliged to give him a valid and ample disposition, and he to pay them 6000 merks for the right; and being charged on this minute, Glencorse suspends, and raises reduction on this reason, that he entered into the transaction, expecting a good and a valid right; but now, on the producing the grounds and warrants of the adjudication, he finds it labouring under such defects and nullities, that is it not worth a sixpence; and by the minute you are to give me a valid disposition; *ita est*, if it were to be extended, it behoved to contain at least this warrantice, not only *debitum subesse*, but also that the diligence for the same is formally and legally deduced; and though in law a cedent is not bound to warrant *debitorem esse solvendo et locupletem*, yet he must always [warrant] his right and title good, L. 4. D. *De act. et heredit. vendit.* See Dirleton, 10th November 1666, Bowie *contra* Hamilton, No. 43. p. 16587; and 9th February 1675, Burd *contra* Reid, No. 54. p. 16602. Answered, The obligation in the minute to grant a valid disposition, can never extend to warrant the legality of the adjudication; for if that had been under view, then a special clause was necessary, particularly obliging to that effect, which is frequent and usual to adject in such cases; and by the smallness of the price paid, it appears there was no such thing intended, else they would not quit 14,000 merks for six thousand, and you have taken your hazard of the right *talis qualis* as it is. The Lords found the Prestons were not obliged to warrant the formality of the diligence and adjudications following thereon.

Fountainhall, v. 2. p. 28.

No 74.
Implied
warrantice.

1704. February 3. STIRLING against STEEL.

In this case, Anna Deans, and Mr. Walter Stirling her husband, against Alexander Deans, and Watson of Muirhouse, his tutor, the deceased Thomas Deans, by his assignation in February 1701, dispones to Anna Deans, his sister, 6000 merks, to be paid her by Patrick Steel out of the fore-end of a greater sum he was owing him; and after his death, Anna and Mr. Walter pursue Patrick Steel for payment, and refer the debt to his oath. He compears, and acknowledges he was owing at the time of the assignation 10,000 merks, but that he had made sundry payments for the defunct, and likewise defrayed all the expense of his funeral, so that there was not remaining in his hands above £200 Sterling of the whole; all which deductions the Sheriff allowed to the said Patrick, as being debts of their own nature preferable to a voluntary gratuitous assignation. Whereupon Anna Deans and her husband falling short of their legacy in 2400 merks,

No. 75.
Warrantice
of an assigna-
tion.