

- No. 82. all other hazards; and therefore if eviction happen otherwise than through the fact and deed of the disponent, he bears the loss. The Lords assoilzied. See APPENDIX.

*Fol. Dic. v. 2. p. 518.*

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No. 83.

1635. February 19. PEACOCK *against* FORBES.

Warrantice from fact and deed adjected to a disposition *mortis causa*, of all debts and sums of money, does not free the donee from being liable to the defunct's debts; for a disposition of an *universitas* must pass *cum suo onere*, and the warrantice is only meant to guard against future gratuitous alterations. See APPENDIX.

*Fol. Dic. v. 2. p. 515.*

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1741. November 6.

JAMES BLAIR of Ardblair *against* HELEN HUNTER, Relict of PATRICK JOHNSTON of Lowercarse, &c.

No. 84.

The nature  
and extent of  
real war-  
rardice.

The said James Blair's father did, in the year 1683, purchase the lands of Hatton of Rattery from Patrick Johnston of Gormoch; and as his right thereto was only a gift of forfeiture (which was thereafter rescinded) Mr. Blair did not think himself safe to rely on Gormoch's title to the lands, or his personal warrantice, but he obtained real warrantice for security of his purchase: And accordingly Gormoch disposes to Mr. Blair the lands of Hatton, &c. as for the principal, and the Mains of Gormoch, &c. and that in special clause of warrantice, and relief and security of the principal lands. The dispositive clause (so far as concerns this question) was in the following terms: "Swa that it shall happen the said lands of Hatton, principally disposed, to be evicted, in hail or in part, from the said James Blair, &c. at the instance of any person, or that they be any ways troubled, &c. in the peaceable bruiking or enjoying the same; then, and in that case, the said James Blair, &c. shall have, immediately thereafter, full and free power, regress and ingress to the said lands of Gormoch, &c. in real warrantice, as said is, and to the intromitting with, and uplifting the mails, farms, and duties thereof; at least, to sa meikle of the same as shall effeir and correspond to the said eviction or distress, *pro rata*." The lands of Hatton were evicted by decret in the year 1722: And, after some other litigation, the said James Blair brought a declarator of recourse against the heirs and creditors of Gormoch his author, for asserting the damages he had sustained through the eviction; for declaring, that he had recourse upon the warrantice lands for those damages; and that the warrantice lands were really affected with the value of his damages:

In the course of this process, he proved the rents of the evicted lands at the date of the eviction, the value thereof, and that he had been excluded from the possession of the principal lands from the year 1722; and therefore, that the loss