No. 43.
the diligence, and reality of the debt.

It was answered, That the warrandice being absolute in the body of the disposition, was indeed qualified by the margin, that it should only be extended to the warrandice of the lands, in so far as concerns the apprising and sums therein mentioned, (which are the words of the margin); and that the said warrandice imports that the disponer should not warrant simply, but as to the sums contained in the comprising; so that in case of eviction Silvertounhill should only refund the same; and the pursuer was content to restrict the warrandice to the sums paid by him. It was urged, that there being three kinds of warrandice, viz. Either absolute; only that the comprising was formal, and the debt just; or a restricted warrandice to refund the price in case of eviction; the last was medium inter extrema, and most equitable; and in obscuris magis æqua interpretatio est contra disponentem facienda, qui potuit legem apertius dicere; and if it had been intended, that he should warrant only the formality, and validity of the comprising, and reality of the debt, it had been so expressed.

Yet the Lords, by plurality of voices, found, that the warrandice should be interpreted, to warrant only the validity of the comprising, and the reality of the debt, that being the most ordinary in rights of comprising.

Dirleton, No. 44. p. 18.

1667. *July* 15. WATSON *against* LAW.

No. 44.
Absolute warrandice in a disposition of lands found not to extend to warrant lands designed for a horse and cow's grass by a subsequent law.

In the process Watson against Law, it was found, That kirk-lands are obliged to warrant from the designation of a glebe; though it was alleged, that *ex natura rei*, and not *ex defectu juris*, the said glebe was evicted.

Thereafter it was found in the same cause, That the designation being as to cows, and horse grass, and upon a law supervenient after the disposition, viz. an act in the late Parliament, the disponer ought not to warrant from a supervenient law.

Dirleton, No. 93. p. 37.

*** Stair reports this case:

James Law having disponed certain lands to John Watson, with absolute warrandice, and after the disposition there being a designation of a part of the land for horse and kine's grass to the Minister, conform to the act of Parliament 1661; Watson pursues for warrandice upon that distress. The defender alleged, absolvitor, because the distress is by a subsequent law, falling after the disposition. It was answered, *first*, That absolute warrandice does even take place in the case of a subsequent law, at least in so far as the pursuer suffers detriment; because, if the lands had continued, the defenders had been so burdened, and therefore is liable *in quantum lucratus est; 2dly*, This is no supervenient law, because the act of Par-

liament 1661 is a reviving of the Parliament 1649, which being rescinded in the said Parliament 1661, by a posterior act thereof, concerning manses and glebes, is declared to be valid, as if it had been made in the year 1649. It was answered to the *first*, That nothing can infer eviction or recourse, but that which had a cause anterior to the warrandice, unless it had been otherwise expressed; nor is it any ground, that if the disponer remained heritor, he had been liable, otherwise all other supervenient burdens would return, not only upon the immediate, but upon all the disponers; but all such accidental superveniencies are upon the purchaser's hazard, as well as the advantages are to his benefit. To the *second*, The time of this disposition, the Parliament 1649 was rescinded, and the new act was not enacted; neither by the new act is it declared to be effectual from the year 1649, as to the horse and kine's grass, but only as to the manse. It was answered, That was but a mistake of the draught of the act of Parliament, there being no reason wherefore it should be drawn back as to manses more than the rest; but it was the meaning of the act of Parliament, to revive the former act of Parliament in all points. It was answered, That the meaning of acts of Parliament may not be extended contrary to the words, neither can any thing be supplied that is omitted in a statutory act. No. 44.

The Lords found no recourse upon the distress arising from the act of Parliament 1661, and that the drawing back thereof being expressly as to manses, which is adjected as a limitation, could not be extended to the Minister's grass, which is statuted in a different way in this than in the act of Parliament 1649: From this the heritors are only to pay £20 of money, and in the former, lands were only to be designed; therefore found, that the distress being by a supervenient law, the warrandice did not reach thereto.

Stair, *v.* 1. *p.* 472.

1668. *July* 1. COLQUHOUN and M'QUAIR *against* STUART of Barscub.

No. 45.
Warrandice against the casualties of superiority.

The Laird of Barscub having feued certain lands to Colquhoun and M'Quair, to be holden of himself; in the contract of alienation there is a special clause, that because the lands are holden ward of the Duke of Lenox, therefore Barscub is obliged to relieve these feus of any ward that should fall in time coming. Thereafter Barscub dispones the superiority of these lands, and by the death of his singular successor, his heir falls in ward; whereupon sentence was obtained against the feuers for the ward duties, and the avail of the marriage, and they now pursue relief against Barscub's heir, upon the clause of warrandice above-written. The defender alleged, that the libel was nowise relevant, to infer warrandice against him, upon the said clause, because the meaning thereof can only be, that he as superior, and so long as he remained superior, shall relieve the feuers, which ceases, he being now denuded of the superiority; otherwise it behoved to have imported, that he should never sell the superiority without the vassal's consent,