

## WARRANDICE.

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1549. *March 28.* L. DRUMMOUND *against* ROBERT STEUART.

**G**IF ony man sellis or annalziez landis heritable, or settis the samin in tak and assedatioun to ane uther, *titulo oneroso*, or with general clause of warrandice alanerlie, he may not be compellit to warrand the samin fra ward, releif or non-entres; because na persoun may be callit and convenit for warrandice of ony landis annalzeit and disponit be him, fra ward, releif or non-entres, except he be speciallie and expreslie bund and oblist thairto; because ward, releif, and non-entres pertenis to the superiour be the commoun law of this realme, fra the quhilk na man is exemit, and sould be knawin to all our soverane Lordis lieges; and thairfoir the uther sould impute it to himself, gif he, not makand special provisioun heiranent, incurris ony skaith throw his awin negligence and inexcusabill ignorance.

*Balfour, p. 318.*

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**No. 1.**  
Warrandice  
of ward,  
relief, &c.

1563. *March 14.* LAURENCE SIMPSON *against* JOHNE ZOUNG.

**G**if infestment, alienatioun, or disposition be made with particular clausis of warrandice, fra wardis, releifis, and non-entres, and fra sic uther special caissis that may follow, togidder with ane general clause of warrandice, fra all uther thingis that may stop or mak impediment to him, to quhom the said infestment is maid, to bruik peciablle the saidis landis at his pleasour; gif thair be ony sic thing as takkis or liferentis not contenit expresslie amang the saidis specialities of warrandice, na actioun of warrandice thairanent sould be gevin, notwithstanding the general clause foirsaid.

*Balfour, p. 319.*

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**No. 2.**  
General  
clause.

1583. *May.* LD. KENFAUNS *against* LD. CRAIGIE.

The Laird of Kenfauns pursued the Laird of Craigie to warrant to him certain lands holden of the Abbacy of Scoone, called the Craigtown, and by a sasine of a

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**No. 3.**  
Where no  
warrandice  
was express-

No. 3.  
ed in a con-  
tract of alic-  
nation of  
lands, this  
was found to  
import abso-  
lute warran-  
dice.

contract, onerous, whereuntil Craigie was bound and obliged to infeft duly Kenfauns into the said lands, and to give to him charter and precept thereof, and the contract's self made no mention of warrandice. It was of truth also, that Kenfauns never pursued to deliver to him any infeftment according to the express bond and words of the contract, but he was infeft otherwise by resignation in the hands of the superior, and therefore Craigie alleged that he was in no manner of ways bound to warrant the same to him, because it had not passed according to the words of the contract, and was no further bound by the contract but to have given to him charter and precept of sasine, the which he was at no time required to do. To this it was answered by Kenfauns, That first the contract was a title onerous in itself, and bore express mention of causes onerous for the discharge of sundry spoilzations and intented actions of the same, and of escheats and most cruel deadly feuds long contracted and continued betwixt the said two houses; and so they were resolved not be astricted to the words of the contract, but to the causes contained and expressed into the same, whilk are altogether onerous, and the contract bore to duly infeft, whilk could not be effectual if the infeftment obtained by Kenfaun's author, by resignation, or otherways, was evicted, as he was already distressed into the same. The matter being reasoned *inter Dominos in presentia Regis*, some were of opinion, that the warrandice of the infeftment passed by resignation could never be sought by virtue of his summons and libel, nor yet by the contract, and that Kenfauns had no action but according to the express words of the contract, to deliver infeftment and precept of sasine. *Alii Dominorum in contraria, &c.* That action of warrandice and eviction, consisted not in words, or into the accidental form of the contract or title onerous, but in the nature of the contract; and particularly in the present case, this land being given by a general transaction of all actions, quarrels, debates, and deadly feuds betwixt the heirs of Kenfauns and Craigie, and for the quieting of the same, and extinction of all manner of actions, both civil and criminal, and so both of law, reason, and equity, the lands ought to be warranted, however, and in whatsoever terms the libel was conceived; and however Kenfauns was infeft in the said lands, the same behoved to be made effectual to him. The Lords found by interlocutor, *in presentia Regis*, That Kenfauns had good action to pursue for warrandice of the said infeftment, albeit there was no express mention contained into the contract to warrant the same, and that his infeftment was passed by resignation, and not according to the words of the contract. *Alii Dominorum in contraria fuerant opinione.*

*Colvil MS. p. 364.*