

tion was not sustained to hinder the Receiver of a Disposition to receive and reduce the excepted Right 18 July 1710 Gibson of Dury contra Gibson and the Executors of Clerk. In Respect the Exception in the Warrant not make a Right, but only secure from Recourse against the Disposer.

The Effect of Warrandice is, that if the Thing warranted be evicted the Person from whom it was evicted shall Recourse against the Warrantor by an Action of Warrandice for making up the Loss sustained, to do which Action when any Suit is moved for evicting the Subject warrant Intimation must be made to the Person liable in Warrandice, that he declines if he have any relevant Plea against Eviction. Verbal Intimation of a Plea to the Guarantee was not per se found sufficient; But such a Notification to him and his thereupon employing an Advocate to take the Cause appeared saw and returned the Process, was sustained as sufficient Intimation, if it proved scripto vel iuramento, seeing Intimation of Pleas is usually made at the Bar to the Parties ordinary. Advocate 16 Janua 1699 Maule contra L. and Master of C.imerino. But Warrandice takes Effect where no previous Intimation of the Plea was made to the Guarantee, unless he can instruct a relevant Defence against the Eviction 22 June 1681 Clerk contra Gordon of Ardonsloan Stair Jhd. Vers. 3.

Effect of Warrandice. Action of Warrandice for Relief is competent to evict the Guarantee, to free the Subject disponent of an unquestionable Incumbent of Distress, tho it hath not actually happen'd 1 July 1629 L. Frongbraught contra L. Balvenie 17 July 1666 Burnet contra Johnston's 17 Feb 1672 Smith of Braeco contra Kest. And the the Disponee prevented Eviction by a voluntary Transaction, Stair Jhd. In the Case of Warrandice of personal or redeemable Rights incur'd, no more can be recovered than the real Expence Loss and Damage sustained by the Distress the less than the Value of the Thing warranted 1 July 1634 Glenfinning contra L. Carnbarroch 26 January 1669 Boyle of Kelburn contra Wilkie 28 Feb. 1672 L. Argile contra L. Mitour. Because in these the Matter is ordinarily liquid. But where an Adjudication disponent with Warrandice from the proper Deeds and Facts of the Disponer and his Author was, in a Reduction thereof upon this Ground that a Part of the Sum adjudged for had before the Adjudication been paid to the Author, restricted to a Security for the principal Sum and Annualrents remaining after Deduction of the Sum paid The Disponer was obliged not only to keep the Receiver of the Disposition harmless as to the Sum he gave for it; but also to pay to him that Part of the Money adjudged for which his Author had uplifted 22 Feb. 1717 Sir John Houston

contra

contra Robert of Hardgray. Because at the Assigning of the Warrandice he took his Hazard of the Sufficiency and Preference of the Obligations to the Tenant understood that the Debt was truly due and no Part of it paid to him or his relatives. Where a Sum due or due to be paid is liable in Warrandice the Disponent is bound to pay the Price he got for these Lands from the Buyer: Because the latter purchased such Lands with the Hazard of Rising in Value. Besides the Risque he run of contingent Insufficiency of the Seller's personal Warrandice, in many Cases as in Deeds of Exchange, and where a Wadset Right of Lands was acquired by a price he set to each, the Wadsetter was found to have Recourse to the Deeds and Deeds of the Warrandice Lands, not only referring to the Interest of the Wadset, but even to the full Wadset and Dutys in the Succession, and the Annuitment of the Wadset Sum to be applied on the Principal 22 July 1675 Menzies contra Campbell.

No Warrandice takes Effect, when the Thing warranted happens thro Default of the Party warranted as by suffering himself to be sold as a vassal 3 March 1629 Murray contra L. Egeston 17 Dec. 1641 Lib. 2. Tit. 4. §. 5. Or by infecting himself safe without the Superior's Consent upon a Disposition of Ward Lands containing double Incumbents 17 Dec. 1610 Maxwell contra Newbury. In these his suppressing the Warrantor's Right, whereby his own Right fell in consequence Stair Lib. 2. Tit. 3. §. 46. Vers. Warrandice hath no further Effect, in Porters granted by the King as supreme Superior were coronal (which are gratuitous) Warrandice hath no Effect. But in Charters of Lands which are no Part of the Crown Revenue or annex'd Property his Majesty's Letters privie annulle the Deed, Craig Jhd. Lib. 1. Tit. 9. §. 18. Lib. 2. Tit. 9. §. 8. Stair Lib. 2. Tit. 3. §. 15. pp. 2. §. 46. in fin. Where a voluntary Deed is concluded expressly in Favour of a Papist, or in others for his Benefit, the Law annulle the Deed, no Action of Warrandice or for Recession of the Price, or other cause thereof is competent. Ut 3. Lib. 2. Tit. 9. §. 18. The L. Stair Jhd. §. 46. in fin. observes, that the Warrandice of Rights granted by Churchmen are not effectual against their Successors in Office. But that must be understood only as to gratuitous Rights. It hath been question'd whether Warrandice is to be incur'd upon any other Ground than that of a Judicial Eviction of the Right, as if Lands disponent were swept away by Inundation, or become barren, or a Right assigned with Warrandice should turn ineffectual thro the Debtor's Insolvency? To which it is answered, that Warrandice relates only to the Point of Right, and not to

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