foundation for the rule, without recurring to the obligation of warrandice. The decisions cited for the petitioner, therefore, rather favour the respondent's claim, since they all regard simple consenters to the deeds of others. No 7.

The petitioner has not the equity on his side; for he has relied on the purchaser's personal security for the price; and if he had taken real security, this probably might have prevented the other creditors from contracting.

In the argument on the Bench, a distinction was made betwixt the disponing a complete or a personal right, which was said to be only an assignation of the procuratory. It is also said, that an author acquiring subsequently any title, this did not accresce to the purchaser, that is, he was not obliged to cede it to the purchaser, but could hold it for his own security, until payment of the price; and upon this it is apprehended the decision went.

"THE LORDS found that the petitioner ought to be ranked on the infeftments of annualrent, to the extent of the sums yet remaining due of the price."

Act. *Ferguson.* Alt. *L. Craigie.* Clerk, *Gibson.*

D. Falconer, v. 1. *No* 145. *p.* 183.

SECT. II.

Where the Author is not liable in Warrandice.

1581. *June.* ARNOT *against* TENANTS.

No 8.
A ward vassal getting the gift of his own ward, must continue the tenants in possession even during the ward.

JEAN ARNOT, and her daughter Spence, warned certain tenants to flit and remove from the lands of K, they having tack and assedation of the said lands of the L. of Glamis, to whom the lands pertained heritably. It was *alleged* for the Tenant, That they ought not to flit and remove, because the lands were fallen in ward, by reason the L. of Glamis is pupil and his lands warded; and during the time of the ward, the tacks were suspended, and so the pursuers had no title to warn them to flit and remove. It was *answered*, That albeit the lands were fallen in ward, yet nevertheless the ward being disponed to the said Lord, and he being the setter of the said tacks, behoved to warrant as many years' tacks after the out-running of the same the time of the ward, and so all being consolidated in his person, could not hurt the Tenants, *quia quem de evictione tenet actio eundem ab agendo repellit exceptio.* It was *answered*, That the consuetude and practique of Scotland was ay, that during the time of the ward, all tenants were removable, and their tacks ceased, *et dominus*

No 8. *hic inducit aliam personam*, for he bruiked the lands *aliter* as wardatar *regi*, *et aliter* as Lord Glamis. THE LORDS, after long reasoning, repelled the allegeance of the defender, and remitted the summons and reply to probation, in repect of the ward disponed to the said Lord.

Fol. Dic. v. 1. *p.* 514. *Colvil, MS. p.* 302.

1611. *July* 5. JAMES SKENE.

No 9.
A Lady's liferent found not to accresce as *jus superveniens* to a donatar of escheat.

JAMES SKENE, donatar to the Earl of Athole's escheat and liferent, seeking declarator thereof, and of the old Countess of Athole's liferent, to the which the said Earl had right, contending in the particular declarator for the mails and duties of diverse lands, against some gentlemen who were infeft, they excepted upon their heritable infeftments granted to them in anno 1584; which was taken away by reply, that the Countess was infeft in conjunct fee holden of the King in anno 1579. They *duplied*, That the Earl, who as heir to his father, being obliged to warrant them, had obtained the right of my Lady's liferent, and so *jus superveniens emptori*, behoved to accresce to them, and corroborate their right. To this was *answered*, That this right could not acresce to them, because before the Earl was found heir to his father, and so long before he could have been obliged to warrant them, his liferent and escheat had fallen in the King's hand; and, by that means, the liferent of the Countess falling to his Majesty's donatar, the Earl was denuded of that right before he was heir; and so, in respect of that mid-impediment which denuded the Earl of the right of the Countess her liferent, before her was that person who, as heir, might have been obliged to warrant those who were infeft before his father, he had not the benefit of the Countess' liferent to transfer in these vassals. In respect whereof, the LORDS repelled the exception. In that same cause, Lethentie and Fardill *alleging*, That their infeftments were confirmed by the King, with a clause *de novodamus*, of all right the King had, by reason of forfeiture, recognition, escheat, liferent, &c.; and so having the right of the liferent of these lands disponed to them long before the donatar's gift, they needed no declarator; the LORDS found that these clauses *de novodomus* might save from forfaufture or recognition, but would not comprehend the gift of escheat or liferent, or any such casualty of the said lands.

Haddington, MS. No 2262.

1636. *March* 10. CRAWFORD *against* L. MURDISTON.

No 10.
A vassal's right having fallen by the

THE Lady Murdiston being divorced from her husband, in whose contract of marriage, her husband was obliged to provide her to the liferent of all lands to be conquest by him after the said contract; to which clause she having made