

- No. 5. of the recognition, and so the annailzier was not obliged to warrant the buyer from the inconveniencies proceeding of the buyer's own fact and fault. It was answered, the annailzier knowing his lands to be ward, and binding himself duly and sufficiently to infest the buyer, he should have given him a charter, and purchased him infest by the superior before any sasine taken. The Lords considering the contract of alienation, whereby Moubray was obliged to infest Alexander Otterburn in Whitelaw, as freely as he held the same, either by charter and sasine following thereupon, or upon resignation, that the buyer was obliged to purchase the superior's consent, and because he took sasine before he got the superior's consent, the failzie proceeded upon his own default; and therefore they found the exception relevant to elide the warrandice.

Haddington MS. v. 2. No. 1770.

1610. *July 14.*

PORTERFIELD *against* KER.

No. 6.

Warrandice
from fact and
deed.

In an action pursued by William Porterfield of that ilk, as son and heir to Mr. John Porterfield of that ilk, against Daniel Ker of Kirkland, as son and heir to Thomas Crawford of Jordanhill, and Janet Ker his spouse, the Lords granted action for the bygone farms of the lands and Mains of Inchmain, which were set in tack by the said Thomas, and the said umquhile Mr. John, *in anno 1571*, for payment of £80, and that for 19 years, and that notwithstanding the said Mr. John never required entry at any time during the said space of 19 years; but that the said Thomas had *bona fides* to uplift the same in respect of a clause irritant contained in the tack, whereby it is provided, that if he failzie in payment of the duty, the tack should be null; which allegiance was repelled, in respect of the tack, which had a special time of entry therein contained; and that the setter had granted a receipt of the first year's duty in fore-mail, and had uplifted the mails and duties, in doing whereof he did against his own deed, and so was *in mala fide*. In the same cause the Lords would not grant to the pursuer other 19 years, because the hail 19 years were expired, and therefore they assoilzied from that part of the summons whereby he craved to be entered to the lands.

Kerse MS. f. 200.

1612. *February 4.*

LORD SANQUHAR *against* CRICHTON.

No. 7.

In an action of warrandice pursued by the Lord Sanquhar against William Crichton of Ryhill, the Lords assoilzied Ryhill, because, by the contract he was only obliged to transfer all tacks and rights which he had of the patronage of Sanquhar, without any clause of warrandice; and albeit it was answered, that the contract was mutual, and contained onerous causes, and that since the contract