1708. *July* 7. Lord ALEXANDER HAY *against* The CREDITORS of SPOT.

No 86.

A person entered into a minute of sale with a proprietor who had been year and day at the horn, and obliged himself for annualrent from a term. He took a gift of the seller's escheat, burdened with a back bond to Exchequer. The Court found his possession must be ascribed to the minute of sale, and he must be liable to the creditors for the annualrents of the price, deducting the expense of the gift and the prestations in the back bond.

BY minute of sale in May 1701, betwixt Archibald Murray of Spot and Lord Alexander Hay, the former disponed his lands of Spot to the latter, who was to pay twenty-two years purchase for the free rent of the stock, and for the teinds conform to the rate in the act of Parliament, with annualrent for both from Whitsunday 1701; and the 13th November thereafter adjudged Spot's estate in implement; but Spot having been at the horn long before the minute of sale, Lord Alexander took a gift of his escheat, and declared the same; and having entered to and continued in possession a matter of seven years, he called the Creditors in a multiplepoinding, that he msght be liable but in once and single payment for the rent of the lands, and not for the annualrent of the price, till after Spot's death; in regard the mails and duties during his lifetime fell under the gift of his liferent-escheat, and belonged partly to Lord Alexander himself, partly to the Creditors preferred in his back-bond to the Exchequer.

Answered for the Creditors of Spot; Lord Alexander being bound to pay annualrent for the price of his purchase, he cannot satisfy that obligement by counting for the rents of the lands; and the Creditors' *jus quæsitum* could not be extinguished or restricted without their consent; *2do*, The property of the lands being stated in Lord Alexander's person by a sovereign right, viz. the minute of sale completed by an adjudication, his after-purchasing the gift of escheat, an accessory right in further security, could never invert his title of possession; nor could he possess thereby, more than a purchaser by roup can possess by the Creditors' rights and diligences he is bound to acquire, while his title of sale continues unquestioned.

THE LORDS found, That Lord Alexander Hay's possession ought to be ascribed to the minute of sale, and that he is countable for the annualrent of the price to the Creditors, after deduction and allowance to him of the expenses of the gift, and the whole prestations contained in his back-bond, which affect the rents of the lands.

Fol. Dic. v. 1. *p.* 600. *Forbes, p.* 261.

1730. *February* 6. RAMSAY *against* CLAPPERTON.

No 87.

FOUND that a wadsetter can purchase in no right to compete with the reverser's right to the lands, upon which his own wadset is founded; because, having the reverser bound in warrandice, he becomes mutually bound to do all in his power to prevent incurring the warrandice: And therefore, when he purchases in a collateral right to the lands, the law presumes it to be done *eo animo* to fortify their common title, upon which account he has a claim against the re-