No 111. might return to her own lands; and till the act 1685, there was no necessity of engrossing the irritancies at length, but a general reference was sufficient to put all parties *in mala fide*. And wherefore was warrandice introduced but to secure against such clauses? Some thought there was a difference betwixt voluntary purchasers and legal adjudgers; that the first were bound to know the qualities and conditions of their author's right, which creditors could not so well come to the knowledge of. Others thought adjudgers in a worse case; for they do not follow the faith of registers when they lend their money, and they are put to adjudge their debtor's lands, which can carry no more but such right as he had; whereas a purchaser lays out his money *ab initio* to obtain a real right. THE LORDS by plurality found, seeing this irritant and resolutive clause was unusual, and not inserted *verbatim* in the precept and instrument of sasine, but only by a general reference, it could not prejudge the singular successors, and therefore assoilzied from her declarator of the irritancy.

Fol. Dic. v. 2. p. 71. Fountainhall, v. 2. p. 678.

1729. *February 6.* GALL *against* MITCHELL.

No 112.

A FEU was granted in the year 1611, with this express irritancy, That if the feuer annalzied the land, without previously offering the same to the pursuer for re-payment of the sum advanced for the feu-right, the feu-contract should be null and extinct, and all that might follow thereupon. This irritancy was brought into the charter as it was in the feu-contract, but omitted in the precept of sasine, whereby it came about, that it was not engrossed in the sasine, nor in any of the following infeftments, not even by way of reference; whereupon it was found, That it could not affect the singular successor of the original vassal. See APPENDIX.

Fol. Dic. v. 2. p. 71.

1730. *February* 13.

Competition betwixt the DUKE of ARGYLE and the CREDITORS of BARBRECK.

No 113.

A SUPERIOR granted a feu-right to his vassal, with certain prohibitory and irritant clauses. These clauses were engrossed at full length in the charter, but not in the precept of sasine, nor in the sasine itself, otherwise than by a general reference, viz. With and under the provisions and conditions particularly mentioned in the charter. It was *pleaded*, in a competition betwixt the superior and the creditors of the vassal, That this general reference was sufficient to interpel creditors or purchasers; for no prudent persons, who lends money upon the faith of an estate in the person of his debtor, will trust to the sasine alone;