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;

he will, no doubt, also insist for a sight of the charter. It was found, notwithstanding, That this general reference was not sufficient against creditors or singular successors. No 113.

Fol. Dic. v. 2. p. 70.

1737. *July* 26. CREDITORS of SMITH *against* His BROTHERS and SISTERS. No 114.

A FATHER having disponed his estate to his eldest son, with the burden of certain sums to his younger children, which did not enter the precept of sasine nor the sasine itself upon the precept, otherwise than by a general reference; the same notwithstanding was found effectual against the son's real creditors, seeing the burden was fully engrossed in the disposition, which was the warrant of the sasine; for, though a general reference in an infeftment is not good against a singular successor, yet a charter is a part of the infeftment as much as a sasine; and a disposition, when it is the immediate warrant of the sasine, stands in place of a charter, and is considered as part of the infeftment. See No. 68. p. 10246. See APPENDIX.

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

SECT. IX.

Rental Rights.—Tacks.

1752. *February* 29. KER *against* WAUGH. No 115.
A perpetual rental is not good against a purchaser, more than a perpetual tack.

KER of Moristoun being proprietor of the lands of Lighterwood, to which he derived right by progress from the Lord Borthwick, pursued a removing against James Waugh, from a farm of the said lands possessed by him upon a tack from the late Moristoun in 1721.

The defence was, That the defender's predecessor in 1592, obtained from the Lord Borthwick a rental-right of the husband-land, from which the defender his heir was now sought to be removed, and whereby he was declared to be kindly tenant for ever. That when in 1721 the defender came to take a tack of some lands adjacent thereto, the husband-land contained in the rental-right was *per incuriam* thrown in, but by which he could not be understood to have renounced the rental-right; and though there was some difference of the rent