No. 8. 1749, July 21. ROBERT KERSELLAN *against* THOMAS BROWN.

THE Lords unanimously adhered to my interlocutor finding redemption not now competent so many years after the lapse of the time limited for the redemption, viz. Martinmas 1704; during all which time Brown has possessed as proprietor though he was infeft only in 1715, and though the reverser's heirs have for the most of that time been minors; for they thought that this was no *pignus* or wadset, but truly a sale for a competent price redeemable in a limited time, but without any power on the wadsetter to require his money.

WARRANDICE.

No. 2. 1738, June 7. FARQUHAR of Gilmilscroft *against* JAMES HAIR.

THE Lords allowed a proof before answer of what was treated at the roup, and of any circumstances that may prove the purchaser's knowledge that these marches were controverted. The President, Royston, Justice-Clerk, Minto, and Dun, thought the seller bound to convey with marches as in the tack with warrandice; and I was upon reading the papers of the same opinion in the belief that the sale had been by a rental, in which case he must have made good that rental and whole subjects for which that rent was paid, and consequently the tack; but at advising it appeared that the sale was not by any rental, and therefore I thought the seller not bound to warrant the marches contained in the tack, even though the tack was read at the roup. But the vote being stated, Whether dispone the marches in the tack with warrandice?—or an act before answer?—I was for the last.

No. 3. 1738, Nov. 21. T. MONTROSE *against* ROBERTSON.

THE Lords found that Mr James Robertson's share of the provision descended to his children notwithstanding the substitution failing any of the children to the survivors, (agreeably to L. 102. D. De Cond. and Dem.) but altered the Lord Ordinary's interlocutor as to the warrandice, and found the mother liable *in toto*.

No. 4. 1741, Feb. 21. DRUMMOND *against* MILN AND BROWN.

WE seemed to agree that as Aitchison granting a liferent to William Murray was a part of the condition of John and William Murray's disposition to him Aitchison, that therefore Aitchison was not liable in absolute warrandice as an ordinary seller, and therefore had he purchased Sir Gilbert Elliot and Brodie's right, it would not have *ipso jure* accresced to William Murray, but that he must have communicated it to William Murray

upon payment of a proportional part of the price. 2dly, We agreed that there was plain evidence of collusion betwixt Aitchison and Drummond his son-in-law in purchasing that right in Drummond's name, as far as collusion is properly applicable to the case; but the question was, Whether Drummond be obliged so to communicate? and it carried by a great majority that he is not obliged, *renit. tantum* Dun *et me*, 3d December 1740. But this was afterwards altered, and it carried by a great majority, that he was obliged to communicate, 21st February 1741; and on 30th June adhered.

No. 5. 1741, Nov. 22. JAMES BLAIR *against* HUNTER.

THE Lords found, that the pursuer who was infeft in certain lands as principal and others in real warrandice, and from whom the principal lands were evicted many years ago, about 20, during most of which he could not effectually bring his process of recourse against the warrandice lands, because of certain disputes still depending concerning the principal lands,—had his recourse only to the extent of the value of the principal lands evicted as they were at the time of the eviction, but not for the rents he lost since the eviction, nor other damage in place of them; but if the rents of the warrandice lands were extant, that he would have right to them, or to sue the intromitters if they had not a good defence. This indeed is agreeable enough to the notion of real warrandice considered as a right of property conditional, but not if it is considered as a right in security, which I always understood it. However the decision was by a great majority, *renit tantum* President *et me*. But 6th November 1741 this altered, and found that the real warrandice is of the same extent as the personal obligation of warrandice, and gives recourse for the damage since the eviction (*i. e.* the annualrents of the value of the lands) as well as before. For the interlocutor were President, Royston, Justice-Clerk, Minto, Strichen, Dun, Balmerino, *et ego*. *Con.* were Drummore, Kilkerran, Murkle, and Arniston.—N. B. Arniston agreed that the recourse lay not only for the value of the lands, that is lands of the same value, but for the damages at the time of eviction.

No. 6. 1751, Feb. 12. CREDITORS OF BURLEIGH *against* HARROWER.

HARROWER feued this mill of Millnathort, at least his authors did, in 1697, with the multures of certain particular lands, and some dry multures, for a feu-duty equal to the then rent of the mill, though it is said now to be of much more value. An eviction happening of part of the lands expressly mentioned as thirled in the miller's charter, and likewise the dry multures, being less than was put in the charter, the miller claimed abatement of his feu-duty equal to the eviction. The creditors alleged, that both the common debtor, Mrs Margaret Balfour, and they her creditors, were singular successors in the superiority, and did not represent the granter of the feu, Lord Burleigh, and therefore not bound by his absolute warrandice. Answered, the abatement is not claimed upon the warrandice; but as this is a rent, a *canon*, paid for the subject feued, where the subject, or any part of it is evicted, no rent or feu-duty can be due for it, and the rent evicted must be deducted from the feu-duty. I thought that if it were either ward or blench holding, such partial eviction could not affect a singular successor; but that a feu was a sort of perpetual location for a constant rent, and the feu-duty was the *canon*