

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 infert 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.

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### WARRANTICE.

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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 warrantice; 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 warrantice?—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 warrantice, and found the mother liable *in toto*.

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

WE seeméd 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 warrantice 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