APPENDIX.

PART I.

PERSONAL AND REAL.

1757. *March* 9. MACLEOD of Geanies *against* HUGH FRASER of Lovat.

No. 1.
Eik to a reversion.

DONALD NEILSON, then of Assint, did, *anno* 1613, grant a feu of the lands of Oldinny to John Maceanreoch and his heirs, for a yearly feu-duty of 13 s. 4 d. Scots; *proviso*, That John Maceanreoch should grant a letter of reversion, bearing the lands to be redeemable after 19 years, by payment or consignation of 1000 merks. John was infeft and put in possession; but, in the 1676, was violently turned out of possession by John Mackenzie, who having by this time acquired several adjudications upon the estate of Assint, was, by virtue of these titles, in possession of the estate. In the year 1730, Margaret Maceanreoch, heir to the wadsetter, was repossessed by authority of the Court of Session; and, about the same time, obtained a decreet against Kenneth Mackenzie, son to the said John, for 16,300 merks, as the supposed amount of the rents and profits of the wadset-lands, during the years the wadsetter was illegally kept out of possession.

In the ranking of the creditors of the said Kenneth Mackenzie, Macleod of Geanies, in right of the said Margaret Maceanreoch, insisted that the wadset could not be redeemed as originally upon the payment of the 1000 merks; but that the wadsetter is entitled to hold possession till the 16,300 merks be also paid. Answered for the creditors; Supposing this defence to be good against Mackenzie of Assint, it is certainly not good against creditors who have adjudged the estate from him; "which accordingly was "found."

The present case coincides with an eik to a reversion of a wadset. Such eik is good by paction against the original reverser or his heirs. The same

NO. 1. holds even without paction. A reverser, when he redeems a wadset, is bound in equity, over and above the wadset-sum, to pay every farthing he is due the wadsetter upon any separate account; and the equitable defence of retention, calculated to lessen the number of processes, will preserve the wadsetter in possession till this piece of justice be done him. According to this rule, the defence insisted on for the wadsetter is undoubtedly good against Mackenzie of Assint. But will it be good against Assint's creditors, or against an onerous purchaser? Even an eik to a reversion protects only against the reverser, whose debt it is, and not against a purchaser, *multo minus* an ordinary debt. Retention is an equitable remedy, introduced to save multiplicity of processes; and there is neither equity nor expediency to sustain it against a purchaser.

Sel. Dec. No. 128. *p.* 184.

1805. *March* 6.

Sir ROBERT PRESTON *against* the Earl of DUNDONALD's Creditors.

NO. 2.

A feus out a piece of ground to B, who again dispones it to C, stipulating by a separate deed, a right of pre-emption in favour of A. C's right remaining personal, A's right of pre-emption is found to qualify C's right, and available against creditors at a judicial sale of his estate.

IN 1745, Sir George Preston of Valleyfield feued out a small piece of ground called Kirkbrae, to General James Cochrane, absolutely and irredeemably. The right was completed by infeftment, (27th November 1748). General Cochrane sold the property to his brother Charles, who, of the same date (30th June 1750) with the disposition in his favour, executed a back-bond in favour of the General, by which he bound himself and his heirs, that before disposing of this subject, it should be offered to Sir George or his heirs at the sum of L. 307 : 13 : 4 Sterling.

Charles Cochrane was never infeft in this property; but he had previously (25th June 1749) executed a disposition of the estate of Culross, and in general of *acquirenda* as well as *acquisita*, in favour of the Earl of Dundonald.

The Earl made up titles to the estate of Culross, by obtaining from the Crown, of whom it held, a charter of adjudication, in implement of the disposition 1749, and taking infeftment on it; but the Earl's right to Kirkbrae remained personal.

In 1780, the Earl's affairs having become embarrassed, Sir Charles Preston, the son and heir of Sir George, brought an action before the Court, for having the above-mentioned clause in favour of his family made effectual. In this action the Court (20th December 1781) found, "That the tenor of "the back-bond and obligation libelled on, ought to be inserted in all the "subsequent titles and investitures of the piece of ground in question." (See No. 22. p. 6569). Decree of non-entry was also obtained by Sir Charles against the Earl.