

1679. December 11. CREDITORS of MOUSEWELL *against* The CHILDREN.

No. 59.

A father disposed his estate to his eldest son, reserving a power, "to burden it with a certain sum for provision to his bairns and other lawful affairs," with a clause of warrantice from his own fact and deed allenary: Notwithstanding of this clause of warrantice, it was found, That this faculty was not exhausted by the father's anterior debts, but that both were burdens upon the son; it being pleaded that such clauses of warrantice contained in gratuitous dispositions, where nothing is intended but to give the right *talis qualis*, are not understood to guard against prior debts, especially in this case, where the father reserved only a life-rent of a part of the lands, no more than sufficient for an aliment.

Stair.

* * This case is No. 60. p. 934. *voce* BANKRUPT.

1680. June 23. MARY PIERS *against* JOHN BLACK, Vintner.

No. 60.

The warrantice of this tack would indeed import that there should be no eviction, nor pretender to the property or possession of the house, that should disturb or dispossess him, but will not extend to a casual accident of a neighbour's building, which, though it incumbered the entry to his house, yet did not totally obstruct it; for if the obstruction had been total, I think the Lords would have freed him from the duty, as they do with tenants in *prædiis rusticis*, when there is a total vastation *per vim graculorum*, by thunder, and if falling out *sine culpa conductoris*. L. 9, 33, and 35. C. De Locato.

Fountainhall MS.

1681. June 23. CLERK *against* GORDON of Gordonston.

No. 61.
Eviction by
process,
whether it
must be
intimated?

Alexander Clerk's name being put in trust in a thirty-two part of a caper-ship for the behoof of Mr. Thomas Buck, after whose death Gordonston having confirmed Mr. Thomas Gordon executor-creditor to his behoof, did count with Clerk, and received a disposition of Buck's share of the caper, and payment of £80 as his share of the profit by the caper, by making prize of the ship called the Calmer; whereupon Gordonston granted to Clerk a discharge of all that could be acclaimed from him upon account of the caper-ship, or profits thereof. Thereafter the Lords reduced the adjudication of the Calmer, and Clerk and the other owners were decerned *in solidum* to refund the value, whereof Clerk's share came to 200 merks; whereupon he charged Gordonston upon his warrantice, who suspended on this