

1682. *March.* JOHN DUNLOP *against* PORTERFIELD of Duchal.

Magbyhill having granted a wadset for 8000 merks, with an obligation to pay in and be accountable for the surplus over the current annual-rents, thereafter an eik of 2500 merks was made to the reversion, but was not registered; and the wadsetter being pursued by an adjudger, after the eik, for extinction of the wadset by intromission with the said surplus,

The Lords found, That the unregistered eik was null *quoad* the adjudger; but that it was *titulus coloratus bonæ fidei ad percipiendos fructus*, not only till the adjudication or citation in this process, but even till sentence therein. Although the reason being a nullity *in jure*, the defender had not *probabilem causam litigandi*. But the process had not depended long, and was to the behoof of the debtor's apparent heir. And it was alleged for the pursuer, That although *titulus bona fidei* may hinder to *repetere fructus consumptos*, yet the defender having also a valid title in his person, viz. the 8000 merks, the surplus ought to be imputed to the extinction of so much thereof yearly.

Harcarse, No. 1024. p. 292.

No. 27.
Effect of an
unregistered
eik.

1683. *March 22.* EARL MARSHAL *against* WADSETTERS.

Found, That in order to restrict the rents of the wadset to the annual-rent, security needs only to be offered for the annual-rent, and not for the *sors*, seeing the infertment continues a security for that.

Harcarse, No. 1025. p. 292.

No. 28.

* * * This case is reported by P. Falconer :

In the action of count and reckoning pursued by the Earl of Marshal against his wadsetters, for surplus duties, wherein the Earl's title was as donatar to the single and life-rent escheat of his brother, who had intented process, in the year 1665, against the wadsetters, as also as having right to the reversion by virtue of several comprisings; it was alleged for the defenders, That they could not be liable since the time of intending the late Earl's process, in respect the deceased Earl never made to the defenders offer of surety for their annual-rent, in the terms of the act of Parliament anent debtor and creditor; *2do*, That albeit the pursuer did offer security *in anno* 1679, yet the same was not sufficient whereupon the defenders could rely, and quit their possessions; *3tio*, That they could not be liable to the pursuer to count, unless he would come in the place of the late Earl, and be liable in the requisition, because the said act of debtor and creditor bears, in case of the offer of security, that the wadsetter shall be liable to count during the not