

1751. *November 26.*

CREDITORS of EASTERFEARN *Competing, i. e.* ALEXANDER ROSS, JOHN DAVIDSON, and Others, *against* CHARLES ROBERTSON, &c.

No. 5.

IN 1692, Alexander Ross of Easterfearn acquired a proper wadset of the wester-quarter of Meikle Allan for 3000 merks, paying a considerable superplus duty to the reverser. After his death, the wadset was, without making up any titles, possessed by William Ross, his son and heir, who acquired the reversion and whole property, and was therein infest. He contracted great debts, and granted an infestment on these lands, now in the person of Alexander Ross, Solicitor; and after his death, his creditors adjudged from his son, as charged to enter heir to him; but thereafter Robertson, and some other creditors, adjudged from the son, not only as charged to enter heir in special to William his father, but also to the said Alexander his grandfather, in order to make a title to the said 3000 merks wadset. On report of Lord Drummore, though we agreed that the wadset was not extinguished by William's possession, whether it was proper or improper, since he had also right to the reversion and superplus duties, yet we unanimously found, that William being infest in the property of the lands, and also apparent-heir in the wadset, though he did not complete his title as heir; and having on the faith of his right as proprietor granted infestments and contracted large debts; that the wadset right could not now be reared up or revived in order to defeat these debts; and therefore repelled the objection to Alexander Ross's infestment, and the adjudication on charges to enter of William.

See Menzies against Dickson, 18th January 1742, *voce* SUPERIOR AND VASSAL.

See NOTES.