descendence came in, it turned out that, in place of a full explanation of the nature of the defender's looms, the whole that had passed was, that Miss Murray said she knew the nature of a twist-wheel or mill; for she had seen one Miss Hay making twist for fringes. This was evidently a very different species of manufacture from what Buchanan proposed to carry on; and, for any thing that appeared, the walls of the house might have been sufficient to have supported the stress of any work of that kind. No. 91.

Observed on the Bench: It is a principle founded in good sense, that an artificer is presumed to know his own business, and whether it is of such a sort as to be a nuisance to another. A landlord is not presumed to know it. Indeed the fact is now admitted that she did not know the nature of the work to be hurtful to the tenement.

"The Lords adhered to the Lord Ordinary's interlocutor, decerning for payment of the rent.

Act. *Ilay Campbell.* Alt. *Wight.* Clerk, *Campbell.*

Fac. Coll. No. 216. *p.* 165.

1780. *January* 14. JOSEPH SYMINGTON *against* ANDREW CRANSTON.

No. 92.
Whether a proprietor is bound by a general clause of warrandice to relieve his tenant of a thirlage?

Cranston let to Syminton a dwelling house, with a malt-barn, kiln, &c. situated within the precincts of the Abbey of Holyroodhouse, warranting his possession against "any stop or impediment whatsoever;" but no mention of any thirlage was made in the lease. After he had possessed some years, however, a claim for multures was made on the tenant by the proprietor of the mills of the Barony of Broughton, the premises making part of the Barony, and being thirled to its mill.

Symington then sued Cranston in an action of relief, founded on the clause of warrandice in the tack, and on an allegation of his total ignorance of the existence of the thirlage, while that fact must have been well known to his landlord.

The Court, however, found, That the landlord was not bound to relieve the tenant of the thirlage; and therefore "Assoilzied the defender."

Act. *G. Ferguson.* Alt. *Wight.* Clerk, *Campbell.*

S. *Fac. Coll. No.* 100. *p.* 192.

1780. *July.* JAMES DEWAR *against* JOHN AITKEN.

No. 93.
Absolute warrandice, what its extent?

Johnston, after granting to Geddes an heritable bond over a house belonging to him, sold the house to Aitken.

No. 93. Aitken in the year 1756 sold it, with absolute warrandice, to Dewar; and for completing the purchaser's right, assigned to him the unexecuted procuratory in the disposition to himself from Johnston.

Dewar, however, did not take infeftment; and in the year 1766 was called in an action of mails and duties, by a person in the right of the heritable bond, which had till this period remained a personal deed. Having been obliged to pay the debt therein contained, he recurred against Aitken, his author, upon the warrandice; who

Pleaded in defence: Where eviction has followed through default of the purchaser, the seller is not bound; L. 56. § 3. D. De evict.; L. 51. § 2; L. 27. Ibid. From Mr. Dewar's delay alone, in not completing his right by infeftment, this debt, with which the seller had no sort of connection, is available against the subject.

Answered: When a purchaser has allowed his right to be defeated, from circumstances occurring after the sale, and nowise imputable to the seller, he has himself to blame. But he is not obliged to get the start of his competitors. It will not, therefore, deprive him of his recourse, that by following out a particular train of management, he might have eluded an incumbrance affecting the subject of his purchase. Hence, by statute 1617, actions of warrandice prescribe only from the term of eviction; whereas, if the defender's argument was well founded, as a purchaser in the space of 40 years may, by proper steps, secure his right against the whole world, there was no reason for exeeming him from the general rule.

The Lord Ordinary found, "That by the obligation of warrandice, Aitken, who sold the subject to Dewar, was bound to clear the subject of the incumbrance of the heritable bond granted by Johnston, his author, to Geddes."—And to this judgment "the Lords adhered, upon advising a reclaiming petition for Aitken, with answers for Dewar."

Lord Ordinary, *Monboddo.* Act. *Geo. Wallace.* Alt. *Rolland.*

C. *Fac. Coll. No.* 122. *p.* 225.

1788. *January* 14. BALFOUR *against* MONCRIEFF.

No. 94. Doubted, but not precisely determined, how far a claim of real warrandice could be effectual against a singular successor, if it was not specified in the warranter's infeftment.

Fac. Coll.

*** This case is No. 79. p. 10267. *voce* PERSONAL AND REAL.