ferred to him without Necessity of Delivery: Because he being already in
Possession of a Part, the Shares of the other Owners accrued to him 16 June
1665 Culheart contra Holland. After Things consisting in Number Measure
or Weight Sold are numbered measured and weighted, or marked by the Buyer
or his Trustee with the initial Letters of his Name; they belong to him
and may be arrested by his Creditors 27 July 1710 Mann contra Maxwell.
The Property of Goods bought by one as servant to another, in that other's
Name, was found to belong to the Person in whose Name and to whose
Behoof they were delivered, and the Goods were made forthcoming for
his Debts; albeit he was intrusted by a third Person to buy them with his
Trustee's Money 24 January 1672 Boylstoun contra Robertson and
Fleeming. A Merchant in Scotland having ordered his correspondent
in Burdeaux to send him 3 Tuns of Wine at the same Price he got for
others; the Property of the Wine was stated in the Person who gave the
Commission by Delivery thereof to the Master of that Ship as his Trustee
22 Decemb. 1680 Prince contra Pallat. But a Bookseller in Glasgow
having sent a Commission for a Parcel of Books to another in London who
shipped the same under a Direction to his own Correspondent at Edinburgh
and advised the Granter of the Commission to receive them from that Cor-
respondent, by a Letter containing the Invoyce or a Catalogue of the Books
with the Prices thereof: It was found, that the Seller was not thereby divested
of the Property of the Books; but that he could not retract the Bargain,
countermand Delivery thereof to the Buyer upon Pretence that but Part
were in Disorder, and that he ought to make the same forthcoming to the
Buyer's Creditors who had confirmed the Books as Effect to him, upon
their paying the Price 8 July 1725 Creditors of Matthie Bookseller in
Glasgow contra Execx of Bell Bookseller in London.

If the Thing sold did not belong to the Seller the true Owner instructing
a Title to it, and that he ceased to possess, not by Alienation but by Loan Spu-
lzie, Piracy Theft or Impignoration &c and proving the same by Witnesses
3 Feb. 1672. Seat of Yorrimberry contra Eliot 27 January 1665 Seat in
Seat contra Fletcher 28 January 1680 Van Porlan & Sandylands contra
Dick, will recover it. So Possession of a Horse was not sustained to hinder the
Vindicationem, or a Pursuit for Restitution, at the Instance of a Person offer-
ing to prove that the Horse was his, and only hired by him to the Seller.
In the Opinion of the Doctors of the Civil Law the Buyer of a Thing stolen
even a publick Fair or Market is bound to restore it to the Owner without
getting back from him the Price given for it to the Seller, Prosp. Farin.
de furt. Quæst. 177. n. 35. By the Law of England stolen Horses sold in
open Market may be claimed before a Justice by the Owner from whom
they were stolen within Six Months 31. Eliz. cap. 12. §. 4. But Horses that
had been in a Fair or Market an Hour between ten a Clock in the forenoon
and Sun-setting, sold after booking entering and paying Toll cannot be
sought back from a Buyer bona fide 2 & 3 Ph. & M. cap. 7. Doctor and

and Student Lib. 1. cap. 25 who gains a Title without Danger of Eviction.
But there is no such Privilege of Fairs in Scotland: And those who buy
any Thing here in publick Market must not think themselves secure
from being questioned, if the Seller has not a good Right to what is sold,
unless the Buyer take Borgh and Hand-fast from the Seller 19 March
1634 Ferguson contra Forrest Stair Lib. 2. Tit. 3. §. 52. Ibid. Vol. 2. pag. 514. And
even by the Law of England, to incourage persons robbed to pursue the Thieves or robbers, if the criminal is
convicted upon the Evidence of the party robbed he shall restore the value of his goods, tho they were sold by
the Thief in a market overt. 21 H. 8. chap. 11. Hale's Hist. pleas Crown. Vol. 1. pag. 542. 543.

But Delivery with Respect to him who has bought a Thing honestly
and fairly from one whom he was not the Legal Owner, the Buyer
believed to be Master of his Gate and Effects, that he possessed, enjoyed it,
and made the Fruits his own, without being in Danger of vindicating
what he has used and consumed, during the time he was ignorant that
the Thing belonged to another Person §. 35. Inst. de rer. Divis. L. 3. C. de per.
& commis. rei vend. and further may require in Property by Prescrip-
tion L. 43. pr. ff. de acquir. rer. domin. ff.

A Buyer from whom the Thing sold is evicted or who is troubled in
his Possession of it or in Danger of it, has his Recourse against
the Seller who ought to warrant him at least against
Eviction. Where a Sale is dissolved by Eviction the Seller is bound to restore the Price
with Damages: Where a Sale is dissolved by Eviction, the Seller is bound to restore the Price
to indemnify the Buyer of Damages which he may sustain there-
by. If the Thing sold is of the same Condition and of the same Value at
the Time of Eviction as it was at the Time of the Sale, the Seller is
bound to restore only the Price which he received and other Damages
if any be. Where a Thing sold is worth less at the Time of Eviction, than
the Price which the Buyer paid for it, he can recover against the Seller
for only the present Value of the Thing and as it is at the Time of Evic-
tion. For it is only in this present Value that the Buyer's Loss by Eviction
consists, and he ought not to be a gainer by the Eviction. If the Thing hap-
pens to be more worth at the Time of Eviction, than it was at the Time
of the Sale, the Price having been augmented by the Effect of Time; the
Seller is bound to the Buyer for what the Thing is worth at Time of
Eviction: For he loses in Effect this Value, when the Thing is evicted
from him; and his Condition ought not to be made worse by this Event,
against which the Seller is bound to warrant him. L. 8. Inst. Civiles &
Rom. §. Part. 1. Lib. 1. Tit. 2. Sect. 10. Art. 13. 14. 15. A Seller is not bound
to warrant the Buyer against Acts of mere Force and Violence or against
Casualties L. 11. ff. de evict. But tho by Agreement, the Seller may be
obliged to less Warrandice than what he is bound to by Law, as that he shall
only warrant against his own Proper Deed, and not against the Rights
of other Persons: Yet he cannot even by express Agreement be discharged
from Warrandice against his own proper Fact. For it would be contrary
to good Manners that he should be allowed to act a dishonest Part L. 23.
ff.