

DIVISION IV.

Novatio non præsuntur.

1626. March 29.

KING against TAYLOR.

No 193.
A new bond for a debt, contained in a prior bond, granted by other obligants, found not to be an extinction of the former bond, but only an additional security.

IN a suspension of James King against Taylor, the LORDS found, That the acceptation of a new bond by a creditor, made by other persons, for payment of the same debt to him, wherein others, his debtors, were obliged, by their other former bond of before, the said posterior bond bearing none of those who were first obliged to be of new again bound in that last accepted bond, but altogether different in the persons obliged, and that the receiving of a part of payment of the debt from the last debtor, conform to the said last bond, did not take away the prior bond, nor liberate the persons bound therein; but that the creditor might have recourse as he pleased to the prior bond, seeing the creditor had not expressly discharged the first bond, when he received the last, without the which, that is, that the first had been *specificce* discharged, the same was not prejudged by the said acceptation of the new security, and receiving of partial payment conform thereto, from the last debtor.—Idem, l. ult. C. De Novat. et § pen. Inst. Quibus mod. toll. obligatio.

Act. Nicolson.

Alt. Stuart & Primrose.

Clerk, Scot.

Fol. Dic. v. 2. p. 150. Durie, p. 201.

1631. November 16.

HORN against STEWART & ROLLOCK.

No 194.

JOHN HORN, executor confirmed to umquhile Lawrence Horn, pursues Henry Stewart and John Rollock, for payment of 800 merks, for which they were bound to the defunct, as cautioners for Patrick Stewart of Baith, conform to their bond. It was *alleged* by the defenders; That they ought to be assolizied; because the pursuer had accepted another bond from the principal, and Robert Stewart, his cautioner, containing the sum of _____, whereby they were obliged to pay the said sum in full and complete satisfaction of the foresaid sums, and so, by this posterior bond, the prior was innovated, and the