

No 4.

Found, that the taking a bond of corroboration does not cut off preceding annualrents, of the debt corroborated.

1696. *January 24.* KINCAID'S CHILDREN *against* MR. JAMES DEAS.

HALCRAIG reported the Children of Thomas Kincaid chirurgion, against Mr. James Deas of Coldingknows Advocate.—The question was, if the accepting a bond of corroboration, bearing only annualrent from the date of the next term, presumed that all preceding annualrents were either discounted or paid. By the common practice, men of ordinary caution do either state an account of all then resting, and accumulate them in the new bond and security; or if they be not included then, they are either paid, or a new ticket given for them, and they are discharged. But the plurality of the LORDS found *in rigore juris* the taking a bond of corroboration did not cut off preceding annualrents, because one may renounce his bonds of corroboration and pass from them, and take himself to the first bonds corroborated, and charge on them, except they be expressly innovated.

Fol. Dic. v. 1. p. 477. Fountainball, v. 1. p. 704.

1715. *February 11.*

Brigadier ALEXANDER GRANT *against* LODOVICK DONALDSON Writer in
Edinburgh.

No 5.

A bond of corroboration being granted and delivered by a third party to a creditor, and he some days afterwards returning it, as not being pleased with it, the Lords found that he might use it, or repudiate it at his pleasure.

THE LAIRD of Grant elder being debtor by bond to Lodovick Donaldson, Brigadier Grant signs a bond of corroboration in the following terms, viz:
‘ That seeing Lodovick did, at the Brigadier’s request, and upon granting the said bond, agree to supersede diligence by caption, &c. against Grant elder, therefore, and but prejudice of the principal bond or diligence thereon, but in corroboration thereof the Brigadier obliged him, &c. as cautioner for Grant elder his father, to pay the said sum against Martinmas then next, &c. providing always, that Lodovick proceed in a process of forthcoming, raised upon an arrestment laid on by him in the hands of the tenants of Dundass. And provided, *2do*, That Lodovick do not assign the original bond to any person; and in case he recovered payment from the Brigadier, he was to assign the original bond and diligence to him, for operating his relief.’ This bond was delivered by John Stewart the Brigadier’s agent, to Lodovick; who some days thereafter offered back the same, (not being pleased with it) to John Stuart, who refusing to receive it, he at last offered it to him under form of instrument; and thereafter transacted the matter with old Grant. The Brigadier upon this intents process against Lodovick Donaldson, concluding, that upon payment of the sum he should be obliged to assign to the Brigadier the original bond against his father, with the diligences, &c.

Answered for the defender, That it was still entire to him to give up the bond to the pursuer, since by the conception thereof, there was no obligation upon.