

band and the interdictors, making another bond of tailzie in the terms of the former, and only assuming her husband into the conjunct fee and liferent with herself, but without repeating the clause of interdiction, and thereafter contracting an heritable debt on the estate, the LORDS, in a poiding of the ground at the instance of the creditor, wherein compearance was made for the presumptive heir of tailzie, and also for the interdictors, who had not consented to the bond, sustained the interdiction as valid; and found, that the second tailzie was not a novation of the first; and, therefore, reduced the debt, as being contracted after the interdiction.

No 197.

*Fol. Dic. v. 2. p. 150. Fountainhall.*

\*\*\* This case is No 40. p. 7162. *voce* INTERDICTION.

1711. *February 7.*NICOLSON *against* MORISON.

No 198.

ANY right granted by a man to his creditor, though above the value of the debt, is presumed to be in further security, not in satisfaction.

*Fol. Dic. v. 2. p. 150. Fountainhall. Forbes.*

\*\*\* This case is No 130. p. 1552. *voce* BILL OF EXCHANGE.

1711. *June 26.*Captain JAMES OSWALD *against* Captain THOMAS GORDON.

No 199.  
Found in conformity to  
Hay *against*  
Hall, No 196.  
p. 11520.

CAPTAIN OSWALD having, in July 1706, got a ticket from Captain Gordon for L. 770 Scots, as the price of rigging furnished by the former to the latter for The Royal William, payable when the Martinmas cess, imposed for outrigging the said ship, is paid;—in November 1707, Captain Gordon drew a bill on John Gordon, writer in Edinburgh, ordering him to pay the said L. 770 to Captain Oswald, out of the first and readiest money due to the drawer out of the Equivalent, and to retire his note, which John Gordon accepted in the fore-said terms. Captain Oswald seeing little appearance of getting payment out of the Equivalent, pursued Thomas Gordon upon his first ticket.

*Alleged* for the defender; The ticket was innovated by taking the bill for the same sum; at least was explained, and the fund of payment determined and agreed to, so as Captain Gordon could not be liable till that were got in and uplifted.

*Replied* for the pursuer; Innovation is not to be presumed or inferred from conjectures, but a posterior obligation is understood to be in corroboration of a former, unless innovation was expressed; § 3. *Instit. Quibus modis toll. oblig.* L. ult. C. De Novat. Stair, *Instit. B. 1. T. 18. § 8.* And the case, 27th July 1666, Newburgh *against* Stuart, observed by Dirleton, No 124. p. 1543.—