

No. 2. 1739, Dec. 11. MR G. BUCHAN *against* SIR. W. COCKBURN.

THE Lords found Mr Cockburn bound to convey his right to Mr Buchan, in security of his purchase, by the President's casting vote; *renit.* Arniston, &c. who, as to the effect of a consent, distinguished betwixt the consent of the proprietor and of one who is only creditor, that in the first case the consent would convey the consenter's right, but that in the other it is only a *non repugnantia*. Drummore and I thought that a consent, without more, was effectual to convey all the consenter's rights to the purchaser, and that whatever is sufficient to convey the property will be equally effectual to convey every lesser right; but then here Sir William does not only consent, but is a principal disponent for all right, &c. The President and Kilkerran went into Arniston's notion of the effect of a consent, but then they thought here Sir William was a principal disponent.

On reconsidering this case, decided 24th July last, it seemed that Sir William was not a joint disponent, and therefore that the question depended upon what is the effect in law of a disposition with consent of a *verus dominus*. I could not think that this imported no more than a *non repugnantia*, which could never convey property, nor even secure against the singular successors of the consenter; and if it imports a disposition in the case of a *verus dominus*, why does it not so in the case of a creditor's *hypothecarius*? But as to this, I own Arniston satisfied me: He said, in the case of a *verus dominus*, or a party having or claiming the property of the subject, or even the liferent by way of locality, such a party consenting can intend nothing less than to convey that right, because he has no interest to retain it,—his right of property or liferent gives him no right to affect any other estate,—and therefore that consent must import more than a *non repugnantia*; but a creditor *hypothecarius*, or even a wadsetter, his meaning can be understood no more than a *non repugnantia*, for he cannot be thought to convey his debt without payment, and without conveying the debt, he cannot convey the security even on these lands, far less on other lands;—and therefore we altered the interlocutor, and found that in this case the consent imported only a *non repugnantia*, and that Sir William is not obliged to convey. We were pretty unanimous, but the President differed, and Drummore, as Ordinary, was in the Outer-House.

No. 3. 1744, July 26. CREDITORS OF EASTERFEARN *against* REPRESENTATIVES OF ANN M'LEOD.

WE gave the like judgment as we did 11th December 1739, Buchan against Sir William Cockburn, that a consent to a disponent by a liferentrix of an annuity, even though it had the words "renounce" and "overgive," imported not a conveyance of the liferent annuity, but a *non repugnantia*.

No. 4. 1748, Feb. 11. EARL OF HOME *against* BOTHWELL.

A BOND of provision to several brothers and sisters, payable at their mother's death, or their majority or marriage, which should first happen, *proviso*, that if either of them died before marriage or majority, their portion should accresce, the one half to the other sisters,—one of them having survived majority, but died before marriage, Drummore found

the substitution still subsisted, because she died before one of the events, marriage. But we altered, and thought the particle OR was meant here conjunctive, and that marriage alone would have put an end to the substitution, though not major, and therefore so should majority, though not married;—and considering the manner of the Earl of Home's signing the contract of marriage and separate assignation, found that he was not barred from quarrelling the Lady's right to the half of her sister's portion. 1st December Adhered to the first point, and 11th February 1748 adhered to the last.—(17th November 1747.)

COMMISSIONERS OF SUPPLY.

No. 1. 1735, July 25. HEPBURN of Monkrigg *against* HAY of Hopes.

THE Lords found, that one infeft in superiority might act as Commissioner of Supply, thought that superiority was valued in the tax-roll only at L.40, provided the property was valued at L.100, the sum the act limits; whereby lands valued at only L.100 may give a good title to both superior and vassal, where both happen to be named Commissioners. But found, that where lands are not separately valued but are parts of a Barony that is valued *in cumulo*, the superior or proprietor cannot act as a Commissioner until they be separately valued,—and therefore sustained the objection to Mr Hugh Dalrymple's vote. They also found, that in this suspension, which is a competition for the immediate possession, a term should be allowed for proving a voter's qualification, and therefore disallowed Sir John Sinclair's vote;—and they found that a minor could not act as Commissioner of Supply, and therefore rejected Mr Dalrymple Stair's vote, the objection being instantly proved by Lord Drummore his father,—and in this last question they found that Lord Drummore could not vote. They repelled the objection to Mr John Armour of the wrong spelling his title, and found that Brinkers, Fallahill, and young Preston's votes were good.

No. 2. 1742, July 30. ELECTION of CLERK of SUPPLY of BANFFSHIRE.

ONE of these Clerks having presented a bill of suspension of the election of the other, which the Ordinary refused;—on a reclaiming bill and answers, we found that the right of this election could not be tried by suspension, reserving reduction as accords,—and the reason was, that the necessary parties were not in the field, *i. e.* the electors.

No. 3. 1742, Dec. 8. SINCLAIR *against* COMMISSIONERS OF SUPPLY of CAITHNESS.

SINCLAIR of Southdun was Collector of Cess from 1731 to 1739 inclusive,—and as there was an arrear due by the County of 1000 merks or thereby of the preceding year, the like arrear of course remained in 1739 when he left the office, because the Receiver-General always imputes payment to the oldest arrears;—and the preceding Collector's first