

No. 12.

“ estates in Scotland, as if they were still possessed of the said old bonds
 “ entire and uncanceled; but find, that where the persons during whose
 “ lives the annuities in the old bonds were to subsist, were different from
 “ the persons during whose lives the annuities in the said new bonds are
 “ granted, that in such cases the annuities must cease and determine by
 “ the death of the persons named in the new bonds, and that neither the
 “ Company nor the estates in Scotland are any longer liable for the same,
 “ albeit the persons named in the said old bonds shall be still living; but
 “ find, that the said preference upon the Company’s lands and estates in
 “ Scotland does cease and determine by the death of the persons during
 “ whose lives the said annuities were granted by the old bonds, although
 “ the persons named in the new bonds shall happen to survive them, and
 “ remit to the Lord Ordinary to proceed accordingly.” The interlocutor
 was agreed to unanimously, and I mentioned two precedents (not mention-
 ed by the bar) that seemed pretty parallel. One observed by Dirleton,
 February 5, 1674, Binnie against Scott;* the other by Forbes, July 29, 1713,
 Creditors of Achlossin competing; † and the reason of the last part of the
 judgment seemed pretty apparent, for no equity could make the annuities
 subsist against the Company longer than by their last covenant with the
 annuitants, that is, than the lives of the nominees in their new bonds; and
 though the Company must remain bound during their lives, although the
 nominees in the old bonds be dead, yet no equity can give the creditors a
 preference on these estates longer than if they had kept their old bonds.
 The Lords, after long reasoning altered this interlocutor, and found that the
 new bonds cannot be ranked on these estates as the old bonds would have
 been. (See DICT. No. 7. p. 7062.)

1753. July 27.

CREDITORS of Sir JAMES CAMPBELL of Auchinbreck *against* EARL of
 LAUDERDALE.

No. 13.

Preference for
 balance of price of
 lands remaining
 unpaid.

THE last Earl of Lauderdale wanting to sell the lands of Glassery, and
 yet unwilling to represent his predecessors, agreed with Sir James Campbell
 of Auchinbreck, that Sir James should acquire certain diligences affecting
 them, after these debts should be adjusted by the Earl and the creditors;
 and on the purchase of these diligences, that Sir James should thereby have
 right to the lands forever without challenge from the Earl or his heirs, who
 was also to cause John Corse, his trustee, renounce certain adjudications of

* DICT. No. 2. p. 7057.

† DICT. APPEND. II. *voce* INNOVATION.

these lands, and his mother and Lady to renounce their infestments; Sir James to pay the half of the agreed price at Whitsunday 1714, the time of his entry, and to give security for the other half, payable at Martinmas 1715, and the surplus of the price over purchasing those debts to be applied for payment of other creditors to be named by the Earl, or to be paid to himself; and 9th June 1714, the Earl granted an obligation, bearing, that Sir James had purchased debts to the full value of the lands, therefore obliging him never to quarrel any rights acquired by him for securing to him the said lands, but that he and his heirs shall enjoy them forever. It appeared by Sir James's letters after this deed that a balance of the price was still resting; and in the ranking and sale of Sir James's estate this Earl claimed preference on these lands for that balance, and founded on Corse's adjudications as preferable. Answered, That by the law of Scotland the seller has no hypothec for the price, that the Earl was as much denuded as ever he was intended to be when the price was paid. Replied, Corse's adjudications are preferable, and not renounced, and the Earl is not bound to perform the contract 1713 to Sir James till he performs his part, and quoted December 5, 1746, Graham against Creditors of Trail, No. 7. *supra*. Duplied, The creditors have no use for the contract 1713, and the obligation 1714 is a sufficient renunciation of all rights in the Earl's or his trustee's person. The Lords found the Earl preferable for the balance yet resting of the price. (See DICT. No. 71. p. 2832. No. 33. p. 14129. No. 34. p. 14131.)

1753. November 22. RANKING of the CREDITORS of BONJEDWARD.

LORD CRANSTON was creditor on the estate of Bonjedward, by an heritable bond and infestment, in L.2400 sterling and many annualrents, and conveyed the whole to Mr Boyle for security of L.2000 sterling; and he also was infest, which L.2000 is now in the person of the Earl of Cassillis. When the debt was in this state the lands were sold at the instance of the apparent heir on the act 1695, and the purchaser gave security to pay the price to the apparent heir and creditors as they should be preferred. Then Ainslie and others, personal creditors of Lord Cranston arrested in the purchaser's hands, after which Lord Cranston made over the debt, or what should remain after Earl of Cassillis's payment, for security and relief of L.600 sterling, wherein the Master of Ross and Mr Wauchope were bound for him, and which they were afterwards obliged to pay. The competition

No. 14.
Effect of arrestment of annualrents due by heritable bond.