

CONSIGNATION.

1738. February 1. ROBERTSON *against* CREDITORS of MATHIESON.

No 1.

A PURCHASER of land having granted bond for the price, which he could not directly pay, because of incumbrances; the seller, some terms thereafter, intimated to him, he would be ready to receive the price at Whitsunday then next; the money was accordingly offered at the term, but incumbrances not being purged, the purchaser took a protest for costs, skaith, and damage, and to be free of interest, in regard he was to consign the money, which he accordingly did, in the hands of a private banker. THE LORDS found him free of interest, though it was pleaded, there could be no regular consignment, except upon a suspension in the hands of the clerk, from whom the creditor has access to demand the money by authority of the Court. See APPENDIX.

Fol. Dic. v. I. p. 199.

1739. January 19. ARBUTHNOT *against* LOCKWOOD and GIBSON.

No 2.
Effect of consignment in case of arrestment.

A REAL creditor upon a bankrupt estate having agreed with the debtor to accept of a certain sum in full of his claims, the debtor consigned the money upon the creditor's refusing to hold bargain, and thereupon obtained an interlocutor in his favour, declaring the creditor's claims upon the estate extinguished.

In the mean time, during this dispute between the creditor and the debtor, certain creditors of the creditor arrested the consigned money, some before, some after this interlocutor; and in the competition among these arresters, notwithstanding it was alleged for the arresters after the interlocutor, that, till the said interlocutor passed, the consigned money remained the property of the consigner; the LORDS 'preferred the prior arresters,' the supervening interlocutor being considered only as declaratory.

Kilkerran, (CONSIGNATION.) No 1. p. 147.