

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.—

No 199. 2do, There is no definite term of forbearance, or new term of payment expressed in the corroborative right, but only a new additional fund of payment pointed to the creditor.

THE LORDS found, that the ticket was payable at the term when the cess fell due by the country to the public; and that Captain Oswald's taking the posterior bill did not innovate the former ticket.

Fol. Dic. v. 2. p. 150. Forbes, p. 511.

* * A similar case was decided, 10th July 1706, Brand against Yorston, No 128. p. 1549. *voce* BILL OF EXCHANGE.

1713. July 10.

JAMES RAMSAY, and DANIEL REID, his Assignee, *against* DAVID SPALDING of Ashintilly.

No 200.

A creditor charged for the whole sum in a bond, after the debtor had accepted a bill for a part. The debtor, notwithstanding, found liable for the whole sum charged for.

IN the action at the instance of James Ramsay against Ashintilly, as attester of the sufficiency of Knockfoldich, cautioner in the suspension of a charge of horning given by the pursuer to Joseph Watson; the LORDS, 19th July 1710, found, that the defender's attestation doth not oblige him for the sufficiency of the cautioner simply, but only for his sufficiency at the time of the attestation, No 85. p. 2162.

The defender now *alleged*; That James Ramsay the charger, having drawn a bill upon Watson the suspender, for L. 300 of the sum in the bond upon which he was charged, payable to Thomas Rattray, which the suspender accepted; this was an answering of so much of the sum in the bond, and putting it upon another footing and method of payment, or an innovation, equivalent as if the creditor in the bond had assigned a third party to so much of his debt, and the assignation had been formally intimated to the debtor. Yea, a debtor's accepting of a bill, payable to a third party, puts him under a stronger tie than an intimated assignation; because the former goes from hand to hand by blank indorsing, without being affected by arrestment or compensation for the indorser's debt. So that it being unwarrantable in Ramsay to charge for the full sum in the bond, after he was denuded, as aforesaid, of a part thereof by the bill, and the suspender not being *in tuto* to pay, he having accepted a bill in part, payable to another; the reason of suspension was just, and, consequently, the cautioner ought to go free.

Replied for the pursuer; The suspender not having paid the bill, he could plead no defalcation thereon, but only to be secured against paying the same, in case he should pay the whole sum in the bond, which may be easily done; seeing Rattray, the creditor therein, acknowledges, by a declaration under his hand, that he was but a trustee for the behoof of Ramsay the drawer, and