

1739. December 11.

MR. GEORGE BUCHAN *against* SIR WILLIAM COCKBURN.

Lands being sold with the consent of a creditor, whose right was preferable upon that subject, as well as the other lands that remained with the seller, and the purchaser insisting against this creditor to communicate his debt and diligence to him, the purchaser, in order to protect him against the diligence of other creditors, the defence was, That consent in this case imports a *non repugnantia*, and not a conveyance. It was admitted, that the consent of a proprietor or creditor to a disposition of the whole subject affected by his right, is a virtual conveyance, for he can have no interest to withhold his right after he passes from all claim to the subject; but where a part is only disposed, a consent can imply no more than a *non repugnantia*, seeing it is of use to him to reserve his right *quoad* the subject not disposed. Found, That the consent in this case imports no more than a *non repugnantia*.—See APPENDIX.

No. 8.

Fol. Dic. v. 2. p. 504.

1779. January 14. RODERICK M'LEOD *against* COLIN CRICHTON.

William Seed, merchant in Belfast, remitted to Sir William Forbes & Co. bankers in Edinburgh, a draught, of 27th April, 1776, on Robert Rodger, for £.120, payable at three months date. This draught was received by the Company 3d May; and, on payment of it, 1st August, 1776, credit was given to Seed in their books for a balance of £.90 remaining due by the Company to him. Seed became bankrupt; and Sir William Forbes & Co. having brought a multiple-poining, a competition ensued betwixt two of Seed's creditors, Roderick M'Leod and Colin Crichton, for this fund in the hands of the Company.

No. 9.
Virtual assignation of a draught by a bill and protest.

Crichton produced as his interest Seed's draught of 16th March, 1776, in his favour, on Sir William Forbes & Co. for £.137, value in account, payable at 41 days sight; which draught had been presented at the house of the Company on 27th March, and protested for not payment, 10th May, 1776.

Colin M'Leod founded on a bill of 3d April, 1776, accepted by Seed to Norman M'Leod for £.100, payable 30 days after date, "at the house of Sir William Forbes & Co." This bill was indorsed by Norman M'Leod; and by him protested for not payment, at the house of the Company, 8th May, 1776. M'Leod likewise brought a process for payment against Seed, having first used arrestment *ad fundam jurisdictionem*; and, on the dependence of this process, again arrested in the hands of Sir William Forbes & Co. 15th October, 1776; and afterwards obtained decree for payment against Seed. Upon this interest,

Pleaded for M'Leod: *1mo*, That although he had no draught directly on Sir William Forbes & Co. it was sufficient authority for them to pay the bill, that it