

S E C T. V.

Obligation to relieve and purge from Incumbrances.

No 22. 1626. *July 20.* LD CLUNIE and STIRLING *against* OGILVIE.

A BUYER of land being allowed to retain part of the price till an incumbrance should be purged; and that having become imprestible, and the seller seeking annualrent for the retained money, because the buyer was also in possession of the lands, and offering likewise caution to warrant him against the said incumbrance; the LORDS found, in so far as the yearly profits of the land did exceed the annualrent of the sums paid, that the defender should pay back the same to the pursuer; but, as to the rest of the profits, refused to sustain action, because the said renunciation was not obtained.

Fol. Dic. v. 2. p. 359. Durie.

*** This case is No 81. p. 543., *voce* ANNUALRENT.

No 23. 1662. *February 4.* LD of ELPHINGSTON *against* MURRAY.

A CHARGE for the price of lands was suspended upon this medium, That by the disposition, the charger was obliged to relieve the suspender of all inhibitions, several of which were condescended upon. The charger *answered, Non relevat*, unless there was a distress, seeing the disposition bears not to purge, but only to relieve. The LORDS considering, that the charger *vergebat ad inopiam*, found the reasons relevant till caution should be found to warrant the suspender from these inhibitions.

Fol. Dic. v. 2. p. 359. Stair.

*** This case is No 42. p. 3392., *voce* DEBTOR and CREDITOR.

No 24. 1706. *July 2.* JAMES SMITH of Cammo *against* HUGH SOMMERVELL, Writer.

No 24.
Where one
stipulated to
retain a part

THE Lord Pollock reported James Smith of Cammo against Hugh Sommervell, writer. Cammo having bought the lands of Arthurstane from Murray,